No. 05-502

Title:	Brigham City, Utah, Petitioner v. Charles W. Stuart, et al.
Docketed:	October 19, 2005
Lower Ct:	Supreme Court of Utah
Case Nos.:	(20021004)
Decision Date:	February 18, 2005
Rehearing Denied:	July 18, 2005

Questions Presented

~~Date~~~	~~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~~~~
Oct 17 2005	Petition for a writ of certiorari filed. (Response due November 18, 2005)
Nov 16 2005	Brief of respondents Charles W. Stuart, et al. in opposition filed.
Nov 18 2005	Brief amici curiae of Wayne County, Michigan, et al. filed.
Nov 30 2005	DISTRIBUTED for Conference of January 6, 2006.
Dec 20 2005	Reply of petitioner Brigham City, Utah filed. (Distributed)
Jan 6 2006	Petition GRANTED.
Feb 8 2006	Brief amici curiae of Americans for Effective Law Enforcement, Inc., et al. filed.
Feb 21 2006	Brief amicus curiae of United States filed.
Feb 21 2006	Joint appendix filed.
Feb 21 2006	Brief of petitioner Brigham City, Utah filed.
Feb 21 2006	Brief amici curiae of National League of Cities, et al. filed.
Feb 21 2006	Brief amicus curiae of Fraternal Order of Police filed.
Feb 21 2006	Brief amici curiae of Michigan, et al. filed.
Feb 23 2006	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed.
Mar 6 2006	SET FOR ARGUMENT on Monday, April 24, 2006.
Mar 17 2006	CIRCULATED.
Mar 20 2006	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Mar 22 2006	Record received from Supreme Court of Utah. (1 box)
Mar 23 2006	Brief of respondents Charles W. Stuart, Shayne R. Taylor, and Sandra Taylor filed. (Distributed)
Mar 28 2006	Brief amicus curiae of National Association of Criminal Defense Lawyer filed. (Distributed).
Apr 5 2006	Motion of National Association of Criminal Defense Lawyer for leave to participate in oral argument as amicus curiae and for divided argument

filed.

Apr 14 2006 Motion of National Association of Criminal Defense Lawyer for leave to participate in oral argument as amicus curiae and for divided argument DENIED.

Apr 14 2006 Reply of petitioner Brigham City, Utah filed. (Distributed)

Apr 24 2006 Argued. For petitioner: Jeffrey S. Gray, Assistant Utah Attorney General, Salt Lake City, Utah; and Paul J. McNulty, Deputy Attorney General, Department of Justice, Washington, D.C. (for United States, as amicus curiae.) For respondents: Michael P. Studebaker, Ogden, Utah.

Supreme Court, U.S.
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No. 05-502

In The
Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Petition For Writ Of Certiorari To The Utah Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

From outside a home at 3:00 a.m., officers witnessed a tumultuous struggle between four adults and a juvenile. Upon seeing the juvenile punch one of the adults in the face, the officers entered the home to quell the violence. The questions presented are:

1. Does the "emergency aid exception" to the warrant requirement recognized in *Mincey v. Arizona*, 437 U.S. 385 (1978), turn on an officer's subjective motivation for entering the home?

2. Was the gravity of the "emergency" or "exigency" sufficient to justify, under the Fourth Amendment, the officers' entry into the home to stop the fight?

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PETITION FOR WRIT OF CERTIORARI

The State of Utah respectfully petitions for a writ of certiorari to review the judgment of the Utah Supreme Court in this case.

OPINIONS AND ORDERS

The opinion of the Utah Supreme Court is reported at 2005 UT 13, 519 Utah Adv. Rep. 17 (App. 1-33). The opinion of the Utah Court of Appeals is reported at 2002 UT App 317, 57 P.3d 1111 (App. 34-45). The order of the First Judicial District Court of Utah, Box Elder County, granting respondents' motion to suppress is unreported (App. 46-48).

JURISDICTION

The decision of the Utah Supreme Court was entered on February 18, 2005. The State's petition for rehearing was denied on July 18, 2005 (App. 49). This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or

affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

1. Summary of Facts. At 3:00 a.m. on July 23, 2000, Brigham City police officers were dispatched to a local residence in response to a complaint about a loud party. App. 2-3. Four officers responded, converging at the street curb in front of the residence. R. 99: 7-11. The officers concluded that the commotion from the home "sounded like there was an altercation occurring, some kind of fight." R. 99: 11, 29. They heard "thumping," people yelling "stop, stop," and someone saying, "get off me." R. 99: 10.

The officers walked up to the house and looked through the front window to "ascertain what was going on." R. 99: 13. They observed a beer bottle on the ledge of the front window, but could see nothing inside. R. 99: 13-14. Leaving one officer to guard the front door, the other three walked to the corner of the house and down the driveway to the backyard fence "to investigate where [the fight] was coming from." R. 99: 15-16. Peering into the backyard through the fence, the officers saw two teenage males drinking alcoholic beverages, but no fight. App. 2-3. They concluded that the fight was in the back of the home – it "was just as severe as when [they had] arrived." R. 99: 18.

"[C]oncerned about the fight," the officers entered the backyard and Officer Jeff Johnson and a second officer walked to the back of the house to investigate. App. 2-3; R. 99: 19-21. Through a window, the officers saw four adults trying to restrain a juvenile against a refrigerator. App. 3;

R. 99: 22. The juvenile's hands were doubled into fists and he was "twisting and turning and writhing" in an effort to break free from the grasp of the adults. R. 99: 22, 40-41. All the while, the combatants were threatening each other and exchanging obscenities. R. 99: 21-22, 54-55. The officers walked past a second window to an open back door. R. 99: 22. The screen door was shut. R. 99: 21.

After reaching the screen door, Officer Johnson saw the juvenile wrest a hand free and "land a punch squarely on the face" of one of the adults, drawing blood. App. 2-3; R. 99: 22, 41, 55. Upon seeing the punch, and in the midst of a flurry of activity that ensued to control the juvenile, Officer Johnson opened the screen door and yelled "police," but it "was so loud [and] tumultuous, that nobody heard a word." App. 2, 18; R. 99: 23, 42. The officers then entered the kitchen and Officer Johnson again yelled as loudly as he could. App. 2; R. 99: 23. The occupants gradually became aware of the officers' presence and the altercation abated. App. 2; R. 99: 23, 45. To prevent anyone else from getting hurt, the officers stepped between the combatants and handcuffed the juvenile. R. 99: 23-24.

When Officer Johnson asked the adult assault victim if he needed assistance, the occupants "turned and became verbally hostile," demanding that the officers leave. App. 2; R. 99: 24. The situation deteriorated from there and the adult occupants were subsequently arrested for disorderly conduct, intoxication, and contributing to the delinquency of a minor. App. 3; R. 99: 62-63.

2. Motion to Suppress. Respondents moved to suppress the evidence of alcohol consumption found inside the home, arguing that the officers' entry violated their Fourth Amendment rights. The trial court granted the

motion, ruling that there were "no exigent circumstances to justify the officers' entry into the residence." App. 47. The court ruled that what the officers "should have done, as required under the 4th Amendment, was knock on the door," even though "the evidence [was] that the occupants probably would not have heard [it]." App. 47.

3. Utah Court of Appeals Decision. The City appealed and in a 2-1 decision, the Utah Court of Appeals affirmed. App. 34-45. The majority concluded that nothing in the findings indicated that "the altercation posed an immediate serious threat or created a threat of escalating violence." App. 40. In dissent, Judge Bench observed that "[i]t is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further." App. 44.

4. Utah Supreme Court Decision. On certiorari, the Utah Supreme Court affirmed, holding that the officers' entry was not justified under either the "emergency aid" exception recognized in *Mincey v. Arizona*, 437 U.S. 385, 392 (1978), or the "exigent circumstances" exception. App. 11-25. The court distinguished the two exceptions, reasoning that the emergency aid exception applies when officers serve a caretaking function and that the exigent circumstances exception applies when officers "pursu[e] a law enforcement mission." App. 16. The court admitted that "this classification scheme is artificial and simplistic," but deemed it useful in evaluating such entries. App. 16.

Emergency Aid Exception. The court applied a three-part test in determining whether an emergency justified the warrantless entry. The City was required to show that: (1) there was "'an objectively reasonable basis to believe'" that there was an emergency requiring immediate assistance

"'for the protection of life,'" i.e., that "'an unconscious, semi-conscious, or missing person feared injured or dead [was] in the home'"; (2) "'[t]he search [was] not primarily motivated by intent to arrest and seize evidence'"; and (3) "'[t]here [was] some reasonable basis to associate the emergency with the area or place to be searched.'" App. 12-13 (citation omitted). The court held that the emergency aid exception did not apply because: (1) having "provid[ed] no medical assistance whatsoever," the officers failed the motivation test, and (2) the gravity of harm fell short of "serious bodily injury." App. 14.

Exigent Circumstances Exception. A 3-2 majority held that the warrantless entry was not justified under the exigent circumstances exception. App. 15-25. The majority held that the harm being inflicted during the fight was insufficient to justify an "exigent circumstances" entry. App. 18-19. It concluded that occupants of a home may "engage in acts that meet the legal definition of assault" without risking a warrantless intrusion by police. App. 18. The majority held that the quantum of harm needed to justify an "exigent circumstances" entry into the home is greater when the safety risk is to its inhabitants rather than to officers. App. 16-18.

The majority also held that the officers violated the Fourth Amendment because they did not first knock to try to gain the occupants' attention from outside the residence. App. 19-20. The majority did so even while acknowledging the trial court's finding that "a knock probably would not have been heard." App. 19-20. The majority held that the officers should have given "thought to the constitutional implications associated with where they announced their presence," and it "speculate[d]" that if the officers had knocked, they might have "achieved the

two-fold objective of quelling the disturbance by making their presence known and honoring the constitutional integrity of the dwelling." App. 20.

Dissent. Joined by Justice Wilkins, Justice Durrant dissented from the majority's exigent circumstances opinion, concluding that the majority's standard of risk "consigns law enforcement to the porch steps until it is too late to prevent the very injury the majority concedes officers are entitled to prevent." App. 31. Citing the trial court's finding that a knock probably would not have been heard and this Court's decision in *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997), the dissent concluded that "it is not unreasonable for officers to bypass knocking or announcing their presence if such an action would be futile, dangerous, or inhibit an effective investigation of the suspected crime." App. 32 (Durrant, J., concurring and dissenting).

REASONS FOR GRANTING THE PETITION

In *Mincey v. Arizona*, this Court recognized "the right of the police to respond to emergency situations," such as when there is an immediate "'need to protect or preserve life or avoid serious injury.'" 437 U.S. 385, 392-93 (1978) (quoting *Wayne v. United States*, 318 U.S. 205, 212 (D.C. Cir. 1963). More generally, this Court has long recognized that an officer may enter a home without a search warrant when there is "a plausible claim of specially pressing or urgent law enforcement need, *i.e.*, 'exigent circumstances.'" *Illinois v. McArthur*, 531 U.S. 326, 331 (2001) (citations omitted). The Utah Supreme Court misapplied

both exceptions, and in so doing exacerbated lower court confusion about their application.

The federal courts of appeal and state supreme courts are divided over whether subjective motivation plays a role in determining whether an emergency aid entry is justified under *Mincey*. Two federal courts of appeal and six state supreme courts have held that subjective motivation is irrelevant; the only issue is whether a reasonable officer would have believed that a person inside the home was in need of immediate aid. By contrast, three federal courts of appeal and thirteen state supreme courts (including Utah) have held that the exception applies only if an officer's subjective motivation for the intrusion was to provide aid (as opposed to enforcing the law). This Court should resolve the conflict.

The lower courts are also in disarray over how grave the danger or wrongdoing must be to justify warrantless entries under either the "emergency aid exception" or the "exigent circumstances exception." In this case, as the dissent observed, the Utah court imposed a standard that "consigns law enforcement to the porch steps until it is too late to prevent the very injury the majority concedes officers are entitled to prevent." App. 31 (Durrant, J., concurring and dissenting). A principled, uniform national standard is needed on this issue as well.

This Court should grant certiorari to ensure consistent application of Fourth Amendment principles on these important and recurring questions and to reverse the Utah Supreme Court's manifestly erroneous holding.

A. Courts Are Deeply Divided Over Whether the Subjective Motivations of Police Officers Are Relevant In Judging "Emergency Aid" Intrusions.

In *Mincey*, this Court observed that "[n]umerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." 437 U.S. at 392. The Court did not approve or otherwise address the specific holdings of those cases because the Arizona officers' initial entry to search for shooting victims and provide aid was not at issue on certiorari. *See Id.* at 392-93 & nn. 6 & 7.[1] But in dictum, the Court agreed that "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" 437 U.S. at 392-93 (citation omitted).

State and federal courts have since cited *Mincey* as recognizing an "emergency aid exception" to the warrant requirement. But because *Mincey* did not articulate a standard by which "emergency aid" entries should be judged, the cases have been anything but consistent. And

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[1] Immediately following the fatal shooting of an undercover officer in the home of a suspected drug dealer, officers entered the home in search of other victims and requested medical aid. *Mincey*, 437 U.S. at 387-88. After the scene was secured, homicide detectives conducted a warrantless search for evidence. *Id.* at 388-89. This Court held that the warrantless search for evidence violated the Fourth Amendment's warrant requirement. *Id.* at 390-95. The Court refused to adopt Arizona's "murder scene" exception and concluded that the search for evidence was not justified under the exigent circumstances exception. *Id.* The validity of the initial entry was unchallenged. *See id.* at 392.

many, including the decision below, have departed from well-settled precedent set by this Court.

Two federal courts of appeal examine emergency entries under the exigent circumstances exception and apply the objective standard traditionally used in Fourth Amendment cases. Under this standard, a warrantless entry into a home is permissible if a reasonable officer would believe that a person is in need of immediate aid. *See In re United States v. Chipps*, 410 F.3d 438, 442 (8th Cir. 2005); *Sealed Case 96-3167*, 153 F.3d 759, 766 (D.C. Cir. 1998). Six state supreme courts have likewise applied an objective standard to emergency entries. *See Wofford v. State*, 952 S.W.2d 646, 651 (Ark. 1997); *People v. Hebert*, 46 P.3d 473, 478-80 (Colo. 2002) (en banc); *State v. Blades*, 626 A.2d 273, 278 (Conn. 1993); *State v. Carlson*, 548 N.W.2d 138, 141-42 (Iowa 1996); *State v. Othoudt*, 482 N.W.2d 218, 223 (Minn. 1992); *State v. Scott*, 471 S.E.2d 605, 613-15 (N.C. 1996).

In contrast, three federal courts of appeal have applied a test that scrutinizes an officer's subjective motivation for making an entry. They hold that even if an intrusion is objectively reasonable, the emergency aid exception does not apply if the officer was not subjectively motivated by the need to render aid. *See United States v. Thomas*, 372 F.3d 1173, 1177 (10th Cir. 2004); *United States v. Cervantes*, 219 F.3d 882, 890 (9th Cir. 2000), *cert. denied*, 532 U.S. 912 (2001); *United States v. Borchardt*, 809 F.2d 1115, 1117 (5th Cir. 1987). These cases follow the lead of *People v. Mitchell*, 347 N.E.2d 607 (N.Y. 1976) – a case cited but not approved or otherwise examined by this Court in *Mincey*. *See* 437 U.S at 392-93 & n.6.

Twelve state supreme courts apply some form of the "*Mitchell*" test. *See State v. Fisher*, 686 P.2d 750, 759-61 (Ariz.), *cert. denied*, 469 U.S. 1066 (1984); *People v. Ray*, 981 P.2d 928, 932-39 (Cal. 1999), *cert. denied*, 528 U.S. 1187 (2000); *State v. Drennan*, 101 P.3d 1218, 1231-32 (Kan. 2004); *State v. Plant*, 461 N.W.2d 253, 262-63 (Neb. 1990); *State v. Frankel*, 847 A.2d 561, 567-10 (N.J.), *cert. denied*, 125 S.Ct. 108 (2004); *State v. Ryon*, 108 P.3d 1032, 1039, 1042-43 (N.M. 2005); *Mitchell*, 347 N.E. at 609-10; *Lubenow v. North Dakota State Hwy Comm'r*, 438 N.W.2d 528, 531-33 (N.D. 1989); *State v. Heumiller*, 317 N.W.2d 126, 129 (S.D. 1982); *State v. Mountford*, 769 A.2d 639, 643-47 (Ver. 2000); *State v. Kinzy*, 5 P.3d 668, 675-78 (Wash. 2000) (en banc), *cert. denied*, 531 U.S. 1104 (2001); *State v. Boggess*, 340 N.W.2d 516, 521-22 (Wis. 1983). Utah joined them in this case. App. 12-13.[2]

The conflict among the courts is deep, intractable, and ripe for resolution. Resolving this conflict is important because this Court has "never held, outside the context of inventory search or administrative inspection . . . , that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment." *Whren v. United States*, 517 U.S. 806, 812 (1996). The vitality of the inquiry into an officer's subjective motivations is thus questionable, at best. *See* 3 Wayne R. LaFave, Search and Seizure § 6.6(a) n.17, p. 454 (4th ed. 2004) (citing *Scott v. United States*, 436 U.S. 128, 137-39 (1978)) (questioning whether

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[2] In *People v. Davis*, the Michigan Supreme Court specifically declined to determine "whether [it would] adopt the subjective element" of the *Mitchell* test. 497 N.W.2d 910, 921 & n.12 (1993), *cert. denied*, 508 U.S. 947 (1993).

Mitchell's subjective inquiry continues to have vitality as a Fourth Amendment matter).

This Court should resolve the question left unanswered in *Mincey*.

B. Courts Are Divided As to the Gravity of the "Emergency" or "Exigency" That Is Necessary to Justify a Warrantless Search.

Courts have also failed to agree on a consistent standard in judging the gravity of the harm or wrongdoing necessary to justify a warrantless entry, under either the emergency aid exception or the exigent circumstances exception.

Some cases have suggested that an emergency aid entry is justified whenever a person's safety or health is in danger. *See, e.g.*, *Minnesota v. Olson*, 495 U.S. 91, 100 (1990) (recognizing that warrantless intrusion "'may be justified by . . . the risk of danger to . . . persons inside or outside the dwelling'"); *Thomas*, 372 F.3d at 1177 (safety); *Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1244 (7th Cir. 1994) (harm), *cert. denied*, 513 U.S. 1128 (1995); *United States v. Moss*, 963 F.2d 673, 678 (4th Cir. 1992) (harm); *Borchardt*, 809 F.2d at 1117 (physical harm); *Carlson*, 548 N.W.2d at 141 (physical harm); *Hebert*, 46 P.3d at 479 (safety); *Kinzy*, 5 P.3d at 676 (health or safety); *Boggess*, 340 N.W.2d at 522 (physical injury).

Other cases suggest a more demanding standard, permitting entry to prevent "serious" injury or harm. *See Mincey*, 437 U.S. at 392 ("avoid serious injury"); *In re Sealed Case 96-3167*, 153 F.3d at 766 (same); *United States v. Martins*, 413 F.3d 139, 147 (1st Cir. 2005) (serious

harm); *Chipps*, 410 F.3d at 442 (serious injury); *United States v. Holloway*, 290 F.3d 1331, 1336 (11th Cir. 2002) (serious injury), *cert. denied*, 537 U.S. 1161 (2003); *Cervantes*, 219 F.3d at 889 (serious bodily injury); *Wofford*, 952 S.W.2d at 651 (serious bodily harm); *State v. Applegate*, 626 N.E.2d 942, 944 (Ohio 1994) (serious injury); *Davis*, 497 N.W.2d at 915 (serious harm); *Frankel*, 847 A.2d at 568 (serious injury); *Ryon*, 108 P.3d at 1045 (life or limb).[3]

The Utah Supreme Court has imposed the most restrictive standard, permitting an emergency aid entry only "for the protection of life." App. 12. The court explained that under this standard, the officer must have "'an objectively reasonable belief that an *unconscious*, *semi-conscious*, or *missing person* feared injured or dead' is in the home." App. 13 (citation omitted) (first and last emphases added). *See also Blades*, 626 A.2d at 277-80 (protect or preserve life).

This Court's decision in *Welsh v. Wisconsin*, 466 U.S. 740 (1984), has spawned more confusion. After holding that the gravity of the offense is relevant in determining whether an exigency justifies a warrantless entry, *Welsh* concluded that Wisconsin's driving while intoxicated (DWI) offense was not of sufficient gravity to justify a warrantless entry because it was only a minor offense under state law. *Id.* at 753-54. Although Wisconsin's DWI offense was a noncriminal offense for which no imprisonment was possible, lower courts are divided over whether

[3] Some courts also permit emergency aid entries to protect property. *See Fisher*, 686 P.2d at 760; *Ray*, 981 P.2d at 934; *Drennan*, 101 P.3d at 1231; *Plant*, 461 N.W.2d at 262; *Mitchell*, 347 N.E.2d at 609; *Lubenow*, 438 N.W.2d at 533; *Mountford*, 769 A.2d at 644.

misdemeanor offenses should be treated as minor offenses under *Welsh*.

Some courts have suggested that *Welsh* forecloses application of the exigent circumstances exception for misdemeanor offenses. *See, e.g., Greiner v. City of Champlin*, 27 F.3d 1346, 1353 (8th Cir. 1994) (concluding that *Welsh* "casts serious doubt on the question of whether a warrantless home arrest for a misdemeanor will ever be deemed reasonable"); *Reardon v. Wroan*, 811 F.2d 1025, 1028 (7th Cir. 1987) (concluding that *Welsh* holds "that, at a minimum, exigent circumstances do not exist when the underlying offense is minor, typically a misdemeanor"); *Othoudt*, 482 N.W.2d at 223-24 (observing that no court "has ever held that exigent circumstances would permit a warrantless entry into a home to arrest for an offense of lesser magnitude than a felony"); *see also Howard v. Dickerson*, 34 F.3d 978, 982 (10th Cir. 1994) (holding that misdemeanor offenses for careless driving and leaving the scene of an accident that are punishable by up to 90 days in jail "do not warrant the extraordinary resource of warrantless home arrest").

The majority in this case joined these courts. Although the majority did not discuss *Welsh*, it distinguished emergencies or exigencies that will justify a warrantless intrusion from those that will not in the same way Utah law distinguishes felony assaults from misdemeanor assaults. *Compare* Utah Code Ann. § 76-5-103 (1999) (making it a felony for an assault that causes "serious bodily injury") *with* Utah Code Ann. § 76-5-102 (1999) (making it a misdemeanor for an assault causing less severe injury). The Utah court thus created a rule that effectively precludes entries based on a misdemeanor offense. The majority reasoned that an assault must be more serious to

justify entry because occupants of a home "may well choose to expose themselves to greater actual or potential harm to preserve their right to be left alone in their homes" and "may even engage in acts that meet the legal definition of assault," free from the risk of a warrantless intrusion. App. 18.

By contrast, other courts have concluded that *Welsh* does not foreclose entries based on misdemeanor offenses, particularly where the offense involves violence or a risk of harm to others. *See, e.g., Joyce v. Town of Tewksbury*, 112 F.3d 19, 22 (1st Cir. 1997) (holding that misdemeanor classification of assault "does not reduce it to a 'minor offense'" under *Welsh*); *State v. Lovig*, 675 N.W.2d 557, 565-66 (Iowa 2004) (concluding that misdemeanor DWI of sufficient gravity to justify warrantless intrusion, but noting significant split of authority on issue); *State v. Paul*, 548 N.W.2d 260, 267 (Minn. 1996) (concluding that misdemeanor DWI of sufficient gravity to justify warrantless intrusion); *State v. Jones*, 667 A.2d 1043, 1049 (N.J. 1995) (recognizing that "the category of misdemeanors today includes enough serious offenses to call into question the desirability" of making exigent circumstance entries dependent on whether the offense is a misdemeanor or felony).

In sum, there is at present no clear, uniform, and principled standard to guide courts in their assessment of the gravity of harm or wrongdoing necessary to justify a warrantless entry. That void has bred confusion among the courts, if not outright division. The time is ripe for this Court to articulate an appropriate standard.

C. The Officers' Entry Into the Home to Stop the Fight Was Reasonable Under the Fourth Amendment.

The Brigham City officers' entry into the home was not only reasonable, but compelled by the circumstances. The officers would have been derelict in their duty had they not acted.

"[O]utside the context of inventory search or administrative inspection," this Court has consistently judged warrantless intrusions against an objective standard, without regard to an officer's underlying intent or motivation. *Whren*, 517 U.S. at 811-13. The Utah court applied a test that squarely conflicts with this objective test, concluding that the officers' entry was unreasonable in part because the officers' subjective motivation for entering was to further a law enforcement purpose rather than to render medical aid. App. 11-14. This was manifest error.

Under the objective test, a warrantless entry is justified if "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey*, 437 U.S. at 393-94 (citation omitted). "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them" at the time of the intrusion. *Graham v. Connor*, 490 U.S. 386, 397 (1989) (applying objective test in use of force case). The "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." *Id.* at 396-97. Therefore, "room must be allowed for some [reasonable] mistakes on their part.'" *Illinois v. Rodriguez*, 497

U.S. 177, 186 (1990) (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)).

The Brigham City officers' entry in this case was "objectively justifiable" under the Fourth Amendment. *See Whren*, 517 U.S. at 812. Upon their arrival at the front curb of the house, the officers heard a fight in progress. The altercation continued with no drop in intensity as the officers investigated first from the front window, then from the driveway, and finally from the back door. Even as the officers watched the four adults fight to restrain the juvenile, they did not enter. But when the juvenile wrested a hand free and punched one of the men in the face, the officers acted. They opened the screen door and yelled. When this failed to gain the combatants' attention, they entered the kitchen and again shouted. Only then did the violence stop, albeit gradually.

The officers' intervention was justified to quell the ongoing violence and prevent further harm to those inside. As observed by the dissent, the officers "were certain that a fight was in progress, that the participants had likely been consuming alcohol, and that at least one individual had already sustained an injury." App. 30 (Durrant, J., concurring and dissenting). And because the altercation was in the kitchen, an officer could reasonably believe that "a knife [could be] pulled from a nearby drawer, elevating the potential severity of physical harm that a participant in the fight—or an innocent bystander—could suffer." *See* App. 31 (Durrant, J., concurring and dissenting); R. 99: 45-46.

The Utah Supreme Court held that the harm inflicted and the gravity of the offense committed did not justify the warrantless entry. App. 13-19. In so holding, the court

disregarded this Court's express recognition that warrantless intrusions are justified to quell ongoing violence, *see Welsh*, 466 U.S at 751, and prevent serious harm to others, *Mincey*, 437 U.S. at 392 (citation omitted). As observed by the First Circuit Court of Appeals, "[e]vidence of extreme danger in the form of shots fired, screaming, or blood is not required for there to be some reason to believe that a safety risk exists." *Fletcher v. Town of Clinton*, 196 F.3d 41, 49 (1st Cir. 1999). The officers here were confronted with all but the shots fired.

The Utah Supreme Court recognized that "[i]t was the acknowledged presence of the authority of the police that quenched the heat in the kitchen." App. 18. Yet, it opined that the only question facing the officers before entering was whether the adults would successfully subdue the juvenile. App. 19. The court assumed too much. Neither it, nor the officers, possessed the clairvoyance to know how the fight would play out. Neither the court, nor the officers, could know whether the violence would escalate. Nor could they know "which of the parties to the melee were victims and which were instigators." App. 29 (Durrant, J., concurring and dissenting). In any event, such speculation—judged from the cool of the courtroom rather than the heat of the kitchen—squarely conflicts with this Court's mandate in *Graham*. Reasonableness "must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396 (addressing reasonableness in use of force case).

Finally, while acknowledging the trial court's finding that the altercation was so loud and tumultuous that "the occupants probably would not have heard" a knock at the door, the majority in this case held that the Fourth

Amendment required the officers to nevertheless try. App. 19-20, 47. Again, and as noted by the dissent, App. 31-32, the majority's holding squarely conflicts with well-settled precedent from this Court. Officers may forego knocking if they "have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile. . . . " *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997) (explaining the circumstances that justify a no-knock entry when executing a knock-and-announce warrant).

* * *

In sum, the officers' entry to quell the violence and prevent further injury was reasonable. Just as "it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze," *Michigan v. Tyler*, 436 U.S. 499, 509 (1978), so too would it defy reason to suppose that police officers must secure a warrant or consent before entering a home to put down an ongoing fight.

D. The Questions Presented Are Important and Recurring.

The importance of these questions is great, particularly where the dangers are occasioned by violence in the home. "In those disputes, violence may be lurking and explode with little warning." *Fletcher*, 196 F.3d at 50. These situations "require police to make particularly delicate and difficult judgments quickly." *Id.* Although Fourth Amendment rights are not and should not be suspended in furtherance of safety, neither should courts "consign[ ] law enforcement to the porch steps until it is

too late" to prevent harm to those inside. App. 31 (Durant, J., concurring and dissenting).

As evidenced by the numerous federal circuit court and state supreme court cases cited, police are frequently confronted with situations that require prompt action. And often, these emergencies occur under circumstances that suggest the possibility of domestic violence, an ever growing problem confronting the justice system.

Given the importance and frequency of "emergency" calls by law enforcement, there is a compelling need for this Court's intervention and guidance.

CONCLUSION

For the reasons stated above, the City's petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

App. 1

IN THE SUPREME COURT OF THE STATE OF UTAH

Brigham City,

Plaintiff and Petitioner,

v.

Charles W. Stuart, Shayne R. Taylor and Sandra A. Taylor,

Defendants and Respondents.

No. 20021004

FILED February 18, 2005

2005 UT 13

First District, Brigham City

The Honorable Clint S. Judkins

Attorneys: Mark L. Shurtleff, Att'y Gen., Jeffrey S. Gray, Asst. Att'y Gen., Salt Lake City, Leonard J. Carson, Brigham City, for petitioner

Rod Gilmore, Layton, for respondent

On Certiorari to the Utah Court of Appeals

NEHRING, Justice:

¶1 We granted certiorari to review the court of appeals's affirmance of the trial court's order granting defendants Charles Stuart and Shayne and Sandra

Taylor's motion to suppress evidence obtained during a warrantless entry into a home. The single issue we are called upon to decide is whether the court of appeals properly affirmed the trial court's determination that the warrantless entry was not supported by exigent circumstances and was, therefore, unlawful. We conclude that the court of appeals was correct and affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

¶2 Four Brigham City police officers responded to a complaint of a loud party. They arrived at the offending residence at about three o'clock in the morning. They traveled to the back of the house to investigate the noise. From a location in the driveway, the officers peered through a slat fence and observed two apparently underage males drinking alcohol. The officers then entered the backyard through a gate, thereby obtaining a clear view into the back of the house through a screen door and two windows. The officers saw four adults restraining one juvenile. The juvenile broke free, swung a fist and struck one of the adults in the face. Two officers then opened the screen door and "hollered" to identify themselves. When no one heard them, they entered the kitchen. After entering, one of the officers again shouted to identify and call attention to himself. As those present in the kitchen became aware of the officers, they became angry that the officers had entered the house without permission.

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[1] Search and seizure cases are "highly fact dependant." *State v. Warren*, 2003 UT 36, ¶ 2, 78 P.3d 590. Therefore, the trial court's factual findings are supplemented with relevant, objective facts gleaned from testimony given during the evidentiary hearing that was held on March 22, 2001.

¶3 The officers subsequently arrested the adults. They were charged with contributing to the delinquency of a minor, disorderly conduct, and intoxication. The defendants filed a motion to suppress which gave rise to this petition.

¶4 The trial court entered the following findings of fact in support of its order granting the motion to suppress:

> "1. On July 23, 2001, at approximately 3:00 a.m., four Brigham City Police officers were dispatched . . . as a result of a call concerning a loud party.
>
> 2. After arrival at the residence, the officers, from their observations from the front of the residence, determined that it was obvious that knocking on the front door would have done no good. It was appropriate that they proceed down the driveway alongside the house to further investigate.
>
> 3. After going down the driveway on the side of the house, the officers could see, through a slat fence, two juveniles consuming alcoholic beverages. At that point, because of the juveniles, there was probable cause for the officers to enter into the backyard.
>
> 4. Upon entering the backyard, the officers observed, through windows and a screen door an altercation taking place, wherein it appeared that four adults were trying to control a juvenile. At one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose.

> 5. At that point in time, the court finds no exigent circumstances to justify the officers' entry into the residence. What he should have done, as required under the 4th amendment, was knock on the door. The evidence is that there was a loud, tumultuous thing going on, and the evidence is that the occupants probably would not have heard, but under the 4th amendment he has an obligation to at least attempt before entering."

Brigham City v. Stuart, 2002 UT App 317, ¶ 12, 57 P.3d 1111 (quoting trial court order).

¶5 The court of appeals determined that Brigham City had not challenged the trial court's findings of fact and denied an attempt by Brigham City to supplement the factual findings. *Id.* at ¶ 6. The court of appeals adopted the facts as found by the trial court and based its holding on them. *Id.*

¶6 Brigham City has urged us to expand our review of the facts to include all of the evidence received at the suppression hearing. Brigham City did not, however, ask us to review the court of appeals's denial of its attempt to expand the scope of reviewable facts. We therefore confine the factual component of our review to the facts considered by the court of appeals.

STANDARD OF REVIEW

¶7 When reviewing cases under certiorari jurisdiction, we apply a standard of correctness to the decision made by the court of appeals rather than the trial court. *State v. Warren*, 2003 UT 36, ¶ 12, 78 P.3d 590. However, the ultimate question of whether a particular set of facts

satisfies a given legal standard is a mixed question of law and fact. *State v. Pena*, 869 P.2d 932, 936 (Utah 1994).

¶8 We recently announced our intention to review for correctness mixed questions of law and fact in search and seizure cases and to undertake this task based on a totality of the circumstances. *State v. Brake*, 2004 UT 95, ¶ 15, 103 P.3d 699. In *Brake*, we cited a desire to develop uniform search and seizure standards to aid law enforcement officers as the reason for adopting a less deferential standard when reviewing whether a particular set of facts surrounding a warrantless search or seizure offended constitutional protections. *Id.* at ¶ 14. The court of appeals issued its opinion in this case before we modified the standard of review in *Brake*. Although we conduct our review under the standard announced in *Brake*, we nevertheless reach the same conclusion that the court of appeals reached under its "measure of deference" standard.

¶9 The accuracy of the subsidiary facts relied upon by the court of appeals was unchallenged. Our review is therefore limited to the correctness of the legal conclusion reached by the trial court and ratified by the court of appeals that no exigent circumstances justified the officers' entry into the home.

¶10 Our aspiration to provide useful guidance to those charged with the day-to-day responsibility of putting search and seizure law into practice is handicapped by the manner in which search and seizure cases are presented to us. This case, like *Brake* and an array of its search and seizure predecessors,[2] either does not raise or inadequately

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[2] *E.g.*, *State ex rel. A.C.C.*, 2002 UT 22, 44 P.3d 708; *State v. Norris*, 2001 UT 104, 48 P.3d 872; *State v. Bisner*, 2001 UT 99, 37 P.3d 1073.

briefs a state constitutional claim. The reluctance of litigants to take up and develop a state constitutional analysis is surprising in light of our repeated statements that federal Fourth Amendment protections may differ from those guaranteed our citizens by our state constitution. *See, e.g.*, *State v. Debooy*, 2000 UT 32, ¶ 12, 996 P.2d 546 ("While this court's interpretation of article I, section 14 has often paralleled the United States Supreme Court's interpretation of the Fourth Amendment, we have stated that we will not hesitate to give the Utah Constitution a different construction where doing so will more appropriately protect the rights of this state's citizens."); *State v. Watts*, 750 P.2d 1219, 1221 n.8 (Utah 1988) ("[C]hoosing to give the Utah Constitution a somewhat different construction may prove to be an appropriate method for insulating this state's citizens from the vagaries of inconsistent interpretations given to the fourth amendment by the federal courts."); *State v. Hygh*, 711 P.2d 264, 271-73 (Utah 1985) (Zimmerman, J., concurring) (stating that state and federal search and seizure law are not identical).

¶11 In *Brake*, for example, we took issue with the usefulness of federal Fourth Amendment jurisprudence concerning the police officer safety justification for warrantless automobile searches. *Brake*, 2004 UT 95 at ¶¶ 27-31. Our reasoning in *Brake* emanated to a great extent from cases in which we concluded that article I, section 14 of the Utah Constitution provides a greater expectation of privacy than the Fourth Amendment as interpreted by the United States Supreme Court.

¶12 Where the parties do not raise or adequately brief state constitutional issues, our holdings become inevitably contingent. They carry within them an implicit qualification that if properly invited to intervene, our

state's Declaration of Rights might change the result and impose different demands on police officers and others who in a very real sense are the everyday guardians of constitutional guarantees against unreasonable searches and seizures.

¶13 In the not so distant history of this court, we engaged in an ongoing and robust discussion over whether and to what extent we should defer to the federal courts when called upon to interpret provisions of our Declaration of Rights, which parallel the federal Bill of Rights. *State v. Anderson*, 910 P.2d 1229, 1234-42 (Utah 1996); *State v. Poole*, 871 P.2d 531, 534-36 (Utah 1994); *State v. Larocco*, 794 P.2d 460, 465-71 (Utah 1990). In *Anderson*, we counseled against departing from the guidance from federal courts except when "compelling circumstances" required it. 910 P.2d at 1235. To do otherwise would cause unnecessary confusion and undercut the policy objective of giving clear direction to judges and law enforcement officials. *Id.* Justice Stewart in his concurrence cautioned against unquestioning fealty to federal precedent on matters of individual liberty. *Id.* at 1240. He defended his view by noting that "[t]he framers of the Utah Constitution necessarily intended that this Court should be both the ultimate and final arbiter of the meaning of the provisions in the Utah Declaration of Rights and the primary protector of individual liberties." *Id.*

¶14 The debate over the proper relationship between the Bill of Rights and Declaration of Rights has lain dormant for almost a decade. This lull does not signal resolution of the matter. The mere passage of time and the accumulation of decisions issued by this court on appeals brought solely on Fourth Amendment grounds may, however, ultimately overpower the merits of an independent

analysis of search and seizure law under our Declaration of Rights. It would be unfortunate, indeed, if such a de facto abdication of our responsibility as guardians of the individual liberty of our citizens were to occur. Because we are resolute in our refusal to take up constitutional issues which have not been properly preserved, framed and briefed, *State v. Holgate*, 2000 UT 74, ¶ 11, 10 P.3d 346; *State v. Lopez*, 886 P.2d 1105, 1113 (Utah 1994), we are once again foreclosed from undertaking a principled exploration of the interplay between federal and state protections of individual rights without the collaboration of the parties to an appeal. This collaborative effort should be renewed.

ANALYSIS

¶15 The right to be free of unreasonable searches and seizures is one of the most cherished rights guaranteed by the Utah and United States Constitutions. *State v. Trane*, 2002 UT 97, ¶ 21, 57 P.3d 1052. The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV. A "cardinal principle" derived by this language is that warrantless searches "'are *per se* unreasonable under the Fourth Amendment.'" *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). Nowhere is this principle more zealously guarded than in a person's home, which is

one of four domains expressly granted the security promised by the Fourth Amendment. The Supreme Court has interpreted the Fourth Amendment as "draw[ing] 'a firm line at the entrance to the house,'" *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (quoting *Payton v. New York*, 445 U.S. 573, 590 (1980)), where even an "officer who barely cracks open the front door and sees nothing" is deemed to have violated its venerable protections, *id.* at 37.

¶16 Even this most highly protected realm may, however, be subject to intrusion in exceptional circumstances where "the needs of law enforcement [are] so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey*, 437 U.S. at 394. We have acknowledged that the requisite compelling need to enter a dwelling exists in the presence of probable cause and exigent circumstances. *State v. Ashe*, 745 P.2d 1255, 1258-59 (Utah 1987). Probable cause exists where the facts that an officer has acquired from reasonably trustworthy sources are sufficient to permit a reasonably cautious person to believe that an offense has been, or is being, committed. *State v. Dorsey*, 731 P.2d 1085, 1088 (Utah 1986).

¶17 Here, the officers' observation of the consumption of alcohol by underage youths and the blow struck by the juvenile in the kitchen of the dwelling were sufficient to establish probable cause and thus are not at issue. Brigham City instead challenges the court of appeals's determination that exigent circumstances did not exist.

¶18 The court of appeals has correctly characterized exigent circumstances as "those 'that would cause a reasonable person to believe that [immediate] entry . . . was necessary to prevent physical harm to the officers or

other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.'" *State v. Beavers*, 859 P.2d 9, 18 (Utah Ct. App. 1993) (quoting *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir. 1984)).

¶19 Among the categories of possible exigent circumstances, only one is relevant here: whether the altercation within the dwelling and the blow struck by the juvenile could give rise to the officers' reasonable belief that their immediate entry was necessary to prevent physical harm to the occupants of the house. With this refinement of our inquiry, we confront the nub of the matter: how grave must the impending harm be to create an exigent circumstance? According to Brigham City, the answer to this question is "not very." Brigham City insists, not implausibly, that it would "defy reason to suppose that peace officers must secure a warrant or consent before entering a house to break up a fight." Brigham City finds support for this view in the observation of Judge Bench in his dissenting opinion that "[i]t is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further." *Brigham City v. Stuart*, 2002 UT App 317, ¶ 20, 57 P.3d 1111.

¶20 Such a restraint on police officer intervention would almost certainly justify the label "nonsensical" were it to describe a melee in the street or another venue unguarded by the Fourth Amendment. However, that the intrusion in question occurred within the confines of a dwelling is the unique fact that sets two forces on a collision course: the constitutional protections afforded houses, and our societal commitment to the peacekeeping mission

of law enforcement officials. It is these two forces that must be balanced in assessing the reasonableness of an officer's warrantless entry into a home.

¶21 Brigham City presents us with two primary arguments, both of which were endorsed in Judge Bench's dissenting opinion below, *Stuart*, 2002 UT App 317 at ¶¶ 17-22. First, Brigham City argues that a showing of exigent circumstances was unnecessary because the entry could have been alternatively justified under the emergency aid doctrine. *See id.* at ¶ 19 n.1 ("The officers might also have been justified in entering the residence pursuant to the emergency aid doctrine, a variant to the exigent circumstances exception."). Second, Brigham City argues that the facts of this case were sufficient to present exigent circumstances. *Id.* at ¶ 21. In reaching this same conclusion, Judge Bench compared the facts in *Stuart* to those in *State v. Comer*, 2002 UT App 219, 51 P.3d 55, a court of appeals case affirming the lawfulness of an entry into a home by officers responding to a call that a family fight was in progress, and concluded that here, greater evidence of actual or threatened harm likewise justified a warrantless entry of the house. *Stuart*, 2002 UT App 317 at ¶¶ 17-19. Judge Bench rejected the majority's assertion that *Comer* was narrowly applicable to warrantless entries based on evidence of domestic violence. *Id.* at ¶ 20. We address each of Brigham City's arguments in turn.

I. EMERGENCY AID DOCTRINE

¶22 Under the emergency aid, or medical emergency, doctrine, law enforcement officers may enter a dwelling without a warrant. The emergency aid doctrine strikes a balance between the rights protected by the Fourth

Amendment and the interests of government to access a dwelling to safeguard the well-being of citizens. The doctrine permits police to make "warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid . . . [because] '[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" *Mincey*, 437 U.S. at 392 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963)); *see also State v. Frankel*, 847 A.2d 561, 568 (N.J. 2004) ("The emergency aid doctrine is derived from the commonsense understanding that exigent circumstances may require public safety officials, such as the police . . . to enter a dwelling without a warrant for the purpose of protecting or preserving life, or preventing serious injury."). The purpose and motivation for actions performed under the emergency aid doctrine distinguish them from conduct subject to constitutional oversight. Officers who render emergency aid are not serving as peacekeepers or in a law enforcement capacity, but rather as caretakers.

¶23 Utah courts have adopted a three-prong test that renders a warrantless search lawful under the emergency aid doctrine when the following conditions are met:

> "(1) Police have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life.
>
> (2) The search is not primarily motivated by intent to arrest and seize evidence.
>
> (3) There is some reasonable basis to associate the emergency with the area or place to be searched."

Comer, 2002 UT App 219 at ¶ 5 n.1 (quoting *Salt Lake City v. Davidson*, 2000 UT App 12, ¶ 12, 994 P.2d 1283). Because officers who act under the emergency aid doctrine are not conducting a law enforcement mission, they may do so without either obtaining a warrant or demonstrating the presence of probable cause or exigent circumstances.

¶24 To reduce the likelihood of misuse of the emergency aid doctrine as a less demanding substitute for a warrant or the more traditional justifications for a warrantless search, the emergency aid entry is justified only where there is "some reliable and specific indication of the probability that a person is suffering from a *serious* physical injury." *Id.* at ¶ 20 (emphasis added). This standard has been further refined to require an "objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead" is in the home. *Id.* at ¶ 19. Furthermore, because of the emergency aid doctrine's link to a police officer's caretaking, it may be invoked only when the purpose of the intrusion is to "enhance the prospect of administering appropriate medical assistance, and the rationale is that the need to protect life or avoid serious injury to another is paramount." Tracy A. Bateman, Annotation, *Lawfulness of Search of Person or Personal Effects Under Medical Emergency Exception to Warrant Requirement*, 11 A.L.R.5th 52 § 2(a); *see also Frankel*, 847 A.2d at 569 (test under emergency aid doctrine states that the public safety official's "primary motivation for entry into the home must be to render assistance").

¶25 What the content and rationale of the emergency aid doctrine make clear is that, notwithstanding a generalized desire or expectation that police officers can and will intervene to aid those who suffer injury, the value

we place on constitutional protections afforded a dwelling imposes a heightened threshold on the degree of actual or impending harm which will justify such an intrusion. Consequently, intrusions to administer aid to less severe injuries may render unconstitutional a search or seizure made incident to the warrantless entry.

¶26 The balancing of interests that informs the emergency aid doctrine does not, contrary to Brigham City's assertion, sanction the entry into the defendants' residence. The magnitude of the harm fell short of the serious bodily injury threshold necessary to access the emergency aid doctrine. The factual findings to which Brigham City stipulated indicate only that "[a]t one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose." *Stuart*, 2002 UT App 317 at ¶ 12. The findings of fact disclose nothing to indicate that the officers found it necessary to render medical assistance to the victim of the juvenile's blow or otherwise minister to an injury of the severity necessary to support the invocation of the emergency aid doctrine.[3] Instead, the record reveals that the officers acted exclusively in their law enforcement capacity, arresting the adults for alcohol related offenses, and providing no medical assistance whatsoever.

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[3] The facts of this case are similar to those in *People v. Allison*, 86 P.3d 421, 423-24 (Colo. 2004), wherein the police responded to a 911 hang-up call, removed a married couple with slight facial injuries, and then re-entered their residence to look for other victims. In holding that the emergency aid doctrine did not apply, the court found it significant that the police did not ask the couple if anyone needed medical assistance before entering the home. *Id.* at 429.

¶27 We recognize that upon entering a residence, an officer may encounter unanticipated circumstances that may heighten or diminish the nature of the emergency that initially prompted officers to enter a dwelling. However, in this case, the officers had a clear view of the interior of the house from their position in the backyard. Any evidence that existed to support an emergency aid entry was acquired by the officers from their position outside the house and not from developments in the altercation that occurred after they entered the kitchen. Therefore, the circumstances known to the officers at the time of entry did not create a reasonable belief that emergency aid was required.

II. EXIGENT CIRCUMSTANCES DOCTRINE

¶28 We next turn to the question of whether the officers' intrusion was justified as a law enforcement activity undertaken pursuant to exigent circumstances. The level of harm necessary to invoke the emergency aid doctrine clearly satisfies the exigent circumstances standard. *See United States v. Holloway*, 290 F.3d 1331, 1337 (11th Cir. 2002) ("[W]e conclude emergency situations involving endangerment to life fall squarely within the exigent circumstances exception."). The question we confront here, however, is whether some lesser actual or threatened harm than that required to justify an emergency aid intrusion will support a warrantless search based on exigent circumstances and, if it can, whether the conduct which stimulated the Brigham City officers to enter the residence meets this standard. We conclude that although the range of actual or imminent injury that will support an exigent circumstances intrusion is more expansive than that available under the emergency aid doctrine,

the court of appeals correctly held that exigent circumstances did not justify the Brigham City officers' warrantless intrusion.[4]

¶29 The primary rationale for permitting police officers greater latitude in justifying an exigent circumstances intrusion than an emergency aid intrusion flows from the different role assumed by officers acting in the face of exigent circumstances. Officers who act in the face of exigent circumstances are pursuing a law enforcement mission, not acting as caretakers. Although this classification scheme is artificial and simplistic, representing just two of many roles that trained police officers integrate confidently and intuitively in their professional lives, it does provide a useful tool to help understand and evaluate warrantless intrusions. It is the presence or absence of probable cause that gives analytical direction to whether a police officer entering a home without a warrant has done so as a caretaker under the emergency aid doctrine or in a law enforcement capacity under the exigent circumstances standard.

¶30 To justify a warrantless entry based on exigent circumstances, a reasonable person must believe that the entry "was necessary to prevent physical harm to the officers or other persons." *Beavers*, 859 P.2d at 18. This standard demands a lesser degree of harm or threat of harm than that necessary to invoke the emergency aid doctrine. The distinction between the approaches to harm

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[4] The court of appeals appears to have applied a threshold of harm under the exigent circumstance doctrine similar to that required to justify an emergency aid intrusion when it observed that the trial court made no findings to support "an immediate serious threat or . . . a threat of escalating violence." *Stuart*, 2002 UT App 317 at ¶ 13.

taken by the emergency aid and exigent circumstances doctrines is evident from the inclusion of officer safety as a consideration in passing judgment on an entry justified as an exigent circumstance. An officer who acts in a caretaker capacity when providing emergency aid is not likely to expose himself to the risk of harm. The sole consideration is the well being of persons inside a dwelling who are entitled to privacy, but who also may be in dire need of aid.

¶31 The same cannot be said for the officer faced with probable cause that a crime has been committed. Officer safety is of concern whenever an officer acts in his law enforcement role. The degree of potential harm to an officer that is necessary to create an exigent circumstance is minimal, reflecting the high value we place on the security of peace officers. *See State v. James*, 2000 UT 80, ¶ 10 n.3, 13 P.3d 576 (citing *Knowles v. Iowa*, 525 U.S. 113, 117-18 (1998)) (noting that the threat to an officer's safety in a routine traffic stop is significantly less than in a custodial arrest, but nevertheless high enough to merit asking the driver to step out of the vehicle).

¶32 The safety of the Brigham City officers is not at issue here. The sole justification for the warrantless entry was the safeguarding of the inhabitants of the dwelling. The rationale for the reduced quantum of harm necessary to justify an exigent circumstance intrusion for the officer does not extend to the inhabitants of a home. Our respect for officer safety flows from our recognition of the dangers inherent in law enforcement. However, the license extended to law enforcement to protect themselves from harm does not apply when the "other persons" covered by the *Beavers* articulation of the exigent circumstances standard are the inhabitants of a dwelling. Unlike law enforcement officers, the inhabitants own the right to be

free in their homes from unreasonable searches and seizures. They may well choose to expose themselves to greater actual or potential harm to preserve their right to be left alone in their homes. They may even engage in acts that meet the legal definition of assault, thereby creating probable cause, but that nevertheless do not create an exigent circumstance authorizing a warrantless intrusion.

¶33 Although linked in the *Beavers* formulation of exigent circumstances, law enforcement officers and inhabitants of dwellings do not share the same threshold of harm necessary to justify a warrantless entry based on exigent circumstances because each possesses different and distinct interests. To the inhabitant of a dwelling who, unlike the law enforcement officer, does not face the reality of danger as a constant workday presence, the warrantless intrusion of a law enforcement officer may be an unwelcome invasion of privacy, even if the inhabitant has sustained an injury. Consequently, the difference between the quantum of harm necessary to invoke the emergency aid and exigent circumstances doctrines is greatest when probable cause is present and a law enforcement officer is exposed to risk, but is of lesser magnitude when the threat of harm is to the inhabitant of the dwelling.

¶34 Here the Brigham City officers entered the home after witnessing four adults attempt to restrain a juvenile, the juvenile break a hand free and strike an adult in the face, and the adults struggle to regain control of the juvenile. When, after entering the kitchen of the house, the officer gained the attention of its occupants the altercation abated. It was the acknowledged presence of the authority of the police that quenched the heat in the kitchen.

¶35 The degree of harm suffered by the adult victim of the juvenile's blow certainly nudges the line of that degree of harm sufficient to create an exigent circumstance. The restraint of the juvenile by the adults, both before and after the blow was struck, is less worthy of justifying an exigent circumstance, but underscores the reality that this case presents us with a close and difficult call. The efforts by the adults to control the juvenile certainly met the legal definition of an assault. If all that were required to authorize a warrantless entry into a home was probable cause that an assault of any severity whatsoever had occurred within the dwelling, the exigent circumstance component of the doctrine would disappear, subsumed within the probable cause requirement.[5] The record reveals that the police officers heard the adults couple their efforts to physically restrain the juvenile with demands that he "calm down." The scene that played out before the officers prior to their entry into the kitchen was one in which the unanswered question was not whether the occupants of the kitchen were going to escalate the violence but instead whether the adults would be successful in accomplishing their goal of subduing the juvenile.

¶36 It is reasonable to believe that while still outside the house the police officers understood that a display of official authority would likely have the desired effect of restoring peace. That is in fact what occurred after the police entered the house. The spreading awareness of police presence ended the confrontation between the

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[5] The nature of a crime or suspicion of criminal activity creating probable cause can, however, contribute to establishing exigent circumstances. *State v. Schlosser*, 774 P.2d 1132, 1137 (Utah 1989) (citing *United States v. Hensley*, 469 U.S. 221, 226 (1985)).

adults and the juvenile. As noted by the trial court, the officers made no attempt to knock before entering. While the trial court noted further that owing to the noise and tumult in the kitchen a knock "probably would not have been heard," the officers nevertheless gave no thought to the constitutional implications associated with where they announced their presence. On the July night of the incident, only a screen door separated the officers from the kitchen. We are left to speculate, although our foray into speculation is appropriate here, whether the officers could have achieved the two-fold objective of quelling the disturbance by making their presence known and honoring the constitutional integrity of the dwelling.

¶37 Our task is to pass judgment on whether the intrusion was reasonable taking into account all the circumstances. *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977) (citing *Terry v. Ohio*, 392 U.S. 1, 19 (1968)). When it singled out for criticism the officers' failure to knock in advance of entering the dwelling, the trial court was not attempting to balance its ruling atop a slender and fragile legal technicality. It was, instead, securing its decision to the sturdier foundation of the deeply rooted constitutional and statutory[6] dignity afforded a dwelling. We therefore agree with the court of appeals and the trial court that the Brigham City officers entered the dwelling without aid of an exigent circumstance.

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[6] *See* Utah Code Ann. § 77-7-8 (2003) (officer must demand admission and explain purpose for entering before making a forcible entry to a building or dwelling in order to arrest an occupant) and § 77-23-210 (2003) (officer must give notice of authority and purpose before executing search warrant).

¶38 In considering the exigent circumstances doctrine, the court of appeals split over the applicability of its opinion in *State v. Comer*, 2002 UT App 219, to the Brigham City intrusion. *Stuart*, 2002 UT App 317. In *Comer*, police officers responded to a citizen's report of a domestic fight. *Comer*, 2002 UT App 219 at ¶ 2. A female occupant of the residence answered the officers' knock on the door. *Id.* The occupant stepped onto the porch, where the officers explained why they were there. *Id.* After telling the officers that her husband was inside the home, the occupant "immediately turned and walked back inside the residence." *Id.* The officers followed and came upon the husband who had scratch marks on his upper body. *Id.* at ¶ 3. The court of appeals affirmed the trial court's finding of exigent circumstances. *Id.* at ¶ 27.

¶39 Judge Bench's dissent in *Stuart* found *Comer* to be controlling. *Stuart*, 2002 UT App 317 at ¶ 17. The majority limited *Comer*'s reach to "domestic violence" situations. *Id.* at n.2. Judge Bench found this to be an unsatisfying distinguishing characteristic. *Id.* at ¶ 20. According to him, it makes little sense to hold police officers to a dual standard, barring an intrusion into a home when conduct amounting to an assault occurs between persons who do not meet the definition of "cohabitants," but permitting it when they do. *Id.* He implies that since assaultive conduct within a home will frequently be accompanied by ambiguity over its status as "domestic violence," all assaults which occur within a home should be presumed to be between cohabitants and therefore police officers who respond to them should be entitled to

access the home under the exigent circumstance analysis which sanctioned the intrusion in *Comer*. *Id.*[7]

¶40 Although we express no view on whether *Comer* was correctly decided, we note the Fourth Amendment protections afforded a dwelling and the unquestioned evils of domestic violence are powerful forces pulling a police officer standing on the threshold of a home in opposite directions: the Fourth Amendment pushing him toward a magistrate and a warrant, domestic violence drawing him through the door to intervene in one of the most common and volatile settings for serious injury or death. We are wary of making sweeping pronouncements in the face of these important, but contradictory, concerns. We also decline to signal our approval for any categorical extension of the exigent circumstances which would permit a warrantless entry into a home, even where to do so may prove beneficial in controlling the scourge of domestic violence, because a categorical extension would unduly threaten the special protection the Fourth Amendment bestows on people in their homes.

¶41 Moreover, *Comer* differs factually from this case in one significant respect not addressed by the court of appeals. The single fact that tipped the balance in favor of concluding that the *Comer* intrusion was reasonable and justified as an exigent circumstance was the abrupt and

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[7] The Utah Legislature has defined "domestic violence" as "any criminal offense involving violence . . . when committed by one cohabitant against another." Utah Code Ann. § 77-36-1(2) (2003). By this definition, any altercation taking place within a home may result in a reasonable belief that the participants are cohabitants committing domestic violence. This interpretation would appear to be consistent with the elevated status of domestic violence as an exigent circumstance advanced by Judge Bench in his dissent.

unexplained re-entry into the home by the female occupant after she had been made aware of the fact of and purpose for the police officers' presence at her home. *See* 2002 UT App 219 at ¶ 26 (noting that the female occupant's re-entry may have indicated to the officers that any number of situations was about to occur, including the continuation of the altercation or an attempt to cover up evidence). The court of appeals surmised that the female's odd behavior reasonably heightened the officers' suspicions that her retreat into the dwelling would be followed by the commission of a domestic assault. *Id.* In contrast, the officers in this case could not assess whether assaultive behavior would continue after their presence was made known to the occupants of the dwelling before entering the kitchen because they made no effort to announce their presence.

¶42 In *Mincey*, the United States Supreme Court struck down Arizona's murder scene exception – a *per se* rule permitting warrantless searches whenever a homicide is committed. 437 U.S. at 395 ("[A] warrantless search . . . [was] not constitutionally permissible simply because a homicide had recently occurred."); *see also Payton*, 445 U.S. at 590 (exigent circumstances required to cross threshold into home despite state statute authorizing warrantless entry to make felony arrests). More recently, the Supreme Court has explained that

> we have treated reasonableness as a function of the facts of cases so various that no template is likely to produce sounder results than examining the totality of circumstances in a given case; it is too hard to invent categories without giving short shrift to details that turn out to be important in

> a given instance, and without inflating marginal ones.

United States v. Banks, 540 U.S. 31, 36 (2003) (discussing reasonableness in execution of search warrants).

¶43 Similarly, in *Comer*, the Utah Court of Appeals "decline[d] to adopt a rule whereby a reliable domestic disturbance report, by itself, would be viewed as supporting" a warrantless entry based on a presumed "serious physical injury." *Comer*, 2002 UT App 219 at ¶ 20. Although a serious crime, domestic violence reports "run the whole range from simply having a verbal argument to severe violence." *Id.* at ¶ 5. Furthermore, Utah law permits officers to "use all *reasonable* means" they may deem "*reasonably* necessary to provide for the safety of the victim and any family or household member" where domestic violence is apparent. Utah Code Ann. § 77-36-2.1(1)(a) (2003) (emphasis added). Thus, even in instances of domestic violence, police are required to assess the situation and conform their actions to a standard of reasonableness, entering only when an exigency is present. *See Comer*, 2002 UT App 219 at ¶ 27 n.11 (the police "can effectively address the volatility of domestic disputes through the *existing* exigent circumstances exception to the warrant requirement" (emphasis added)); *see also United States v. Davis*, 290 F.3d 1239, 1244 (10th Cir. 2002) ("[W]e hold an officer's warrantless entry of a residence during a domestic call is not exempt from the requirement of demonstrating exigent circumstances."); *State v. Frankel*, 847 A.2d 561 (N.J. 2004) (rejecting *per se* rule permitting warrantless entry on basis of a 911 hang-up call); *Commonwealth v. Kiser*, 724 N.E.2d 348, 351 (Mass. App. Ct. 2000) (loud party is "not the sort of riotous

behavior that justified entry under the statute" which was intended to permit entry for breach of peace).

¶44 We are also unwilling to replace the reasonableness requirement with a per se rule concerning domestic violence that disregards other factors in the totality of the circumstances. Our rejection of a rule that would grant a suspicion of domestic violence the status of a per se exigent circumstance does not render considerations of domestic violence irrelevant. Just as it would be unwise to permit factors bearing on domestic violence to sweep aside other relevant considerations when applying a totality of the circumstances assessment, it would be likewise improper to dismiss the domestic violence as a factor which could contribute to a finding of exigent circumstances. There was no finding that any of the parties to the altercation in the Brigham City home were cohabitants, and therefore, domestic violence considerations have no place in the evaluation of whether exigent circumstances justified the intrusion.

¶45 The decision of the court of appeals is affirmed.

¶46 Chief Justice Durham and Justice Parrish concur in Justice Nehring's opinion.

DURRANT, Justice, concurring and dissenting:

¶47 Although I agree with much of the majority's opinion, I respectfully dissent from its application of the exigent circumstances doctrine to the facts of this case. In my view, the Fourth Amendment does not prescribe paralysis when law enforcement officials are eyewitnesses

to an ongoing assault and immediate intervention is necessary to prevent physical harm.

¶48 The question posed by this appeal is whether police officers who personally witness an ongoing physical altercation in a residence may enter that residence in order to prevent bodily harm, or whether those officers must remain rooted onlookers, waiting passively for violence to escalate to a point at which severe harm is likely to occur. Unlike the majority, I conclude that the Fourth Amendment does not require police officers to be spectators in the face of ongoing violence and, in fact, allows officers to intervene in circumstances like those present in this case.

¶49 The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Although the amendment has been interpreted as drawing "a firm line at the entrance to the house," *Payton v. New York*, 445 U.S. 573, 590 (1980), that line can be crossed so long as the government entry is reasonable under the circumstances, *see Illinois v. McArthur*, 531 U.S. 326, 330 (2001) (observing that the Fourth Amendment's "'central requirement' is one of reasonableness"); *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977) ("The touchstone of our analysis under the Fourth Amendment is [and] always [has been] the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." (internal quotation omitted)).

¶50 It is well established that "searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton*, 445 U.S. at 586. However, "[t]he

ordinary requirement of a warrant is sometimes supplanted by other elements that render the unconsented search 'reasonable.'" *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990). As the majority correctly acknowledges, a warrantless entry into a home is reasonable if the entry can be justified under either the emergency aid or exigent circumstances doctrine. *See, e.g.*, *Welsh v. Wisconsin*, 466 U.S. 740, 749-50 (1984); *State v. Comer*, 2002 UT App 219, ¶¶ 17, 21, 51 P.3d 55; *State v. Beavers*, 859 P.2d 9, 18 (Utah Ct. App. 1993). Both of these doctrines allow for warrantless entries to prevent physical harm. *See, e.g.*, *Mincey v. Arizona*, 437 U.S. 385, 392 (1978) (stating that the need to protect life or prevent injury in an emergency or exigent situation justifies otherwise unconstitutional behavior); *Comer*, 2002 UT App 219 at ¶ 5 n.1 (noting that the emergency aid doctrine can be invoked when officers "have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need [of] assistance for the protection of life"); *Beavers*, 859 P.2d at 18 (observing that exigent circumstances exist when officers reasonably believe immediate entry is required "to prevent physical harm to the officers or other persons" (internal quotation omitted)).

¶51 I agree with the majority that, in this case, the trial court's factual findings cannot be read to justify the officers' warrantless entry on the theory that the officers were supplying "emergency aid." I disagree, however, with the majority's conclusion that the situation encountered by the officers was insufficiently "exigent" to justify an immediate entry.

¶52 "There is . . . no absolute test for determining whether exigent circumstances are present because such a determination ultimately depends on the unique facts of

each case." *United States v. Gray*, 71 F. Supp. 2d 1081, 1084 (D. Kan. 1999) (citing *United States v. Anderson*, 154 F.3d 1225, 1233 (10th Cir. 1998)). "Generally, exigency does not evolve from one individual fact. Instead, there is a mosaic of evidence, no single part of which is itself sufficient." *State v. Ashe*, 754 P.2d 1255, 1258 (Utah 1987). Consequently, a reviewing court must evaluate the totality of the facts and circumstances surrounding the warrantless entry, *see id.*, while considering how those facts and circumstances "would have appeared to prudent, cautious, trained officers," *Gray*, 71 F. Supp. 2d at 1084.

¶53 The majority accurately acknowledges that the emergency aid and exigent circumstances doctrines impose different thresholds of harm that must be met before the doctrines can be properly invoked. *See supra* ¶ 29. As evidence of this distinction, the majority reasons that officers are more likely to encounter threats to their personal safety when pursuing a law enforcement objective than when serving in a caretaking capacity. *See supra* ¶¶ 29-30. That distinction does partially explain why the exigent circumstances doctrine can be invoked in situations where the level of harm at issue is significantly lower than in an emergency aid situation.

¶54 However, in my view, the pivotal reason for requiring a lower quantum of harm in the exigent circumstances context is that officers invoking exigency must first show probable cause of criminal activity before making a warrantless entry, a requirement absent in the emergency aid context. Because invocation of the exigent circumstances doctrine demands the presence of probable cause, that doctrine is a significantly less dramatic departure from typical Fourth Amendment requirements than the emergency aid doctrine. This fact diminishes the

necessity of demanding high level of physical harm before allowing a warrantless entry in exigent circumstances, as the high physical harm threshold of the emergency aid doctrine is set, at least partially, to ensure that the doctrine is not utilized as mere pretext.

¶55 Here, the officers were justified in entering the residence because, at the time of their entry, they possessed both probable cause that a continuing assault was being committed within the residence[1] and a reasonable belief that an immediate entry was necessary to prevent physical harm to others. *See Beavers*, 859 P.2d at 17-18.

¶56 According to the trial court, officers investigating a noise complaint observed underage drinking through a slat fence bordering the backyard of the residence that was the subject of the complaint. Upon entering the backyard, the officers were able to see into the residence through windows and a screen door. At that moment, the officers became eyewitnesses to a physical altercation involving five individuals, one of whom was a juvenile. The officers saw the four adults attempting to restrain the juvenile. It could not have been clear which of the parties to the melee were victims and which were instigators. Also, the officers could not have known whether they were witnessing domestic violence, as even trained police officers do not have the necessary clairvoyance to instantly determine if participants in a physical altercation are

[1] The officers also had probable cause to believe that multiple other crimes were occurring. Before entering the residence, the officers had already directly observed underage drinking, intoxication, and disorderly conduct. Arrests were ultimately made for contributing to the delinquency of a minor, furnishing alcohol to minors, disorderly conduct, and intoxication.

members of the same household. The officers, while observing the ongoing struggle, saw the juvenile wrest a hand free and "smack" one of the adults in the nose. Given that the officers had already observed underage drinking, they could have reasonably believed that alcohol was fueling the altercation, which had the potential to further escalate and cause additional harm to the participants in the fight. There will be uncertainties in any law enforcement situation. The officers in the present case were, no doubt, uncertain about many things. However, they were certain that a fight was in progress, that the participants had likely been consuming alcohol, and that at least one individual had already sustained an injury.

¶57 The Fourth Amendment does not demand certainty before action. It demands only reasonableness. Because there is always some level of uncertainty about the nature of events police officers encounter, "[o]n the spot reasonable judgments by officers about risks and dangers are protected." *Fletcher v. Town of Clinton*, 196 F.3d 41, 50 (1st Cir. 1999). Already armed with probable cause, the officers on the scene reasoned that immediate entry was necessary to prevent harm. That judgment was not unreasonable under the circumstances and does not offend the Fourth Amendment. *See, e.g., id.* at 49 ("Evidence of extreme danger in the form of shots fired, screaming, or blood is not required for there to be some reason to believe that a safety risk exists."); *Tierney v. Davidson*, 133 F.3d 189, 198 (2d Cir. 1998) ("The absence of blood, overturned furniture or other signs of tumult" does not require an officer "to withdraw and go about other business, or stand watch outside the premises listening for the sounds of splintering furniture."); *United States v. Brown*, 64 F.3d 1083, 1086 (7th Cir. 1995) ("We do not think the police

must stand outside an apartment despite legitimate concerns about the welfare of an occupant, unless they can hear screams. Doubtless outcries would justify entry, but they are not essential.").

¶58 The majority would have the officers in this case stand outside, powerless and removed from the location of the brawl. The majority would conclude otherwise, apparently, if a knife had been pulled from a nearby kitchen drawer, elevating the potential severity of physical harm that a participant in the fight – or an innocent bystander – could suffer. The majority's rule consigns law enforcement to the porch steps until it is too late to prevent the very injury the majority concedes officers are entitled to prevent.[2]

¶59 The majority contends that the officers were not completely foreclosed from taking action: they could have knocked. The trial court's findings of fact illustrate, however, that the majority puts undue emphasis on the officers' decision to forego knocking before intervening in the fight. While it is true that "the method of an officer's entry into a dwelling [is] among the factors to be considered in assessing the reasonableness of a search and

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[2] Of course, the circumstances in which a warrantless entry into a home can be justified, even if the officers possess probable cause, are rare. In fact, there will be many situations where officers who have probable cause to believe that a technical assault is occurring within a home will nevertheless be unjustified in entering that home without a warrant, e.g., if an officer witnesses one individual slap another and there was no prospect of continuing violence. After all, the Fourth Amendment demands that any entry be reasonable under the circumstances. However, in this case we are dealing with the rare situation in which ongoing violence, actually witnessed by police officers, was of a sufficient degree to justify an immediate entry.

seizure," *Wilson v. Arkansas*, 514 U.S. 927, 934 (1995), it is not unreasonable for officers to bypass knocking or announcing their presence if such an action would be futile, dangerous, or inhibit an effective investigation of the suspected crime, *see Richards v. Wisconsin*, 520 U.S. 385, 394 (1997); *see also Ingram v. City of Columbus*, 185 F.3d 579, 588 (6th Cir. 1999) (stating that just as certain exigencies excuse the warrant requirement, certain circumstances excuse officers from announcing their presence before entering a dwelling). The trial court's unchallenged findings note that the officers encountered a "loud, tumultuous" situation and that a knock on the door would have almost certainly gone unnoticed. In fact, evidence adduced below showed that, even after entering the residence, the officers had to shout above the din multiple times before the occupants became aware of their presence.

¶60 When it is apparent that an immediate physical entry into a dwelling is necessary in order to quell ongoing violence, it is ill-advised to require officers to waste precious time on the doorstep engaged in a futile attempt to announce their presence. The Fourth Amendment does not require such empty gestures.

¶61 Although the officers in this case were faced with uncertainties, the critical aspects of the situation were clear. The officers were eyewitnesses to a "loud, tumultuous," and ongoing brawl. Alcohol was obviously being consumed, one blow had been struck, and the officers could have reasonably believed that their intervention was necessary to prevent further injuries. In such a potentially volatile situation, neither the Fourth Amendment nor sound public policy prevents police intervention to secure the peace and protect the public. Accordingly, I

would conclude that the officers did not offend the Fourth Amendment's reasonableness requirement in the present case and would therefore reverse the court of appeals.

¶62 Associate Chief Justice Wilkins concurs in Justice Durrant's opinion.

IN THE UTAH COURT OF APPEALS

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Brigham City,
a municipal corporation,
Plaintiff and Appellant,

v.

Charles W. Stuart,
Shayne R. Taylor,
and Sandra A. Taylor,
Defendants and Appellees.

OPINION
(For Official Publication)

Case No. 20010479-CA

FILED
October 3, 2002

2002 UT
App 317

First District, Brigham City Department
The Honorable Clint S. Judkins

Attorneys:
Leonard J. Carson, Brigham City, for Appellant
Rod Gilmore, Layton, for Appellees

Before Judges Bench, Greenwood, and Thorne.

THORNE, Judge:

¶1 Brigham City appeals from an interlocutory order granting Defendants' joint Motion to Suppress Evidence

collected after Brigham City police officers entered a private residence without first obtaining a warrant. We affirm.

BACKGROUND

¶2 On July 23, 2000, at approximately 3:00 a.m., four Brigham City police officers responded to a loud party complaint. After arriving at the house, the officers proceeded to the back of the house to investigate the noise. From the driveway, through a slat fence, the officers saw two young men, who appeared to be under age, consuming alcohol. The officers entered the backyard through a gate, thereby obtaining a clear view into the back of the house.

¶3 Looking into the house through a screen door and two windows, the officers observed four adults restraining one juvenile. The juvenile, who was struggling to break free, managed to swing his fist and strike one of the adults in the face. Two of the officers then opened the screen door and stepped into the house. Only after entering the house did one of the officers shout to identify and call attention to himself. One by one, each person in the kitchen became aware of and acknowledged the officers' presence, then become angry that the officers had entered the house without permission.

¶4 The officers subsequently arrested each of the adults and charged them with: contributing to the delinquency of a minor, disorderly conduct, and intoxication. Defendants filed a joint Motion to Suppress Evidence. After an evidentiary hearing, the trial court granted Defendants' motion. Brigham City submitted a proposed order to the trial court that contained the trial court's

findings of fact. That order was signed as proposed and it is from this order that Brigham City now appeals.

ISSUES AND STANDARD OF REVIEW

¶5 We review the factual findings underlying a trial court's decision to grant or deny a motion to suppress evidence for clear error, and the legal conclusions for correctness, "with a measure of discretion given to the trial judge's application of the legal standard to the facts." *State v. Moreno*, 910 P.2d 1245, 1247 (Utah Ct. App. 1996).

¶6 In the present case, neither party disputes the written factual findings that support the trial court's legal conclusion that no exigent circumstances justified the officers' warrantless entry into the private residence. We accordingly review the trial court's application of Fourth Amendment principles to the undisputed facts of this case. *See id.*

ANALYSIS

¶7 Brigham City argues the trial court erred in determining that there were no exigent circumstances to justify the warrantless entry into a private residence. "A warrantless search of a residence is constitutionally permissible where probable cause and exigent circumstances are proven." *State v. Yoder*, 935 P.2d 534, 540 (Utah Ct. App. 1997). When a private residence is involved, the State's burden in proving the existence of probable cause and exigent circumstances is "particularly heavy." *Id.* (citations and quotations omitted). This elevated burden is a result of the "heightened expectation of privacy" that citizens enjoy in their homes. *State v. Beavers*, 859 P.2d 9, 13 (Utah Ct. App. 1993).

¶8 Exigent circumstances exist where a reasonable person in the officers' position would "'believe that entry was necessary to prevent physical harm to the officers or other persons, [to prevent] the destruction of relevant evidence, [to prevent] the escape of the suspect,'" or to prevent the improper frustration of legitimate law enforcement efforts. *Beavers*, 859 P.2d at 18 (citation and ellipsis omitted). In addition, the need for immediate entry must be apparent to police at the time of entry, and so strong as to outweigh the important protection of individual rights provided under the Fourth Amendment. *See id.*

¶9 Our determination of exigency is based upon an examination of the totality of the circumstances. *See State v. Wells*, 928 P.2d 386, 389 (Utah Ct. App. 1996), *aff'd*, 939 P.2d 1204. We grant the trial court a degree of discretion in determining the ultimate disposition because "'the facts to which the legal rule is to be applied are so complex and varying that no rule adequately addressing the relevance of all these facts can be spelled out. . . . '" *State v. Teuscher*, 883 P.2d 922, 929 (Utah Ct. App. 1994) (ellipsis in original) (quoting *State v. Pena*, 869 P.2d 932, 939 (Utah 1994)).

¶10 We first address Brigham City's request, made during oral argument, that this court make any additional findings of fact that might be necessary to find exigent circumstances in this case. However, an "'appellate court is entrusted with ensuring legal accuracy and uniformity and should defer to the trial court on factual matters.'" *Bailey v. Bayles*, 2002 UT 58,¶19, 52 P.3d 1158 (quoting *Willey v. Willey*, 951 P.2d 226, 230-31 (Utah 1997)). The supreme court has further determined:

> It is inappropriate for an appellate court to disregard the trial court's findings of fact and to assume the role of weighing evidence and making its own findings of fact.
>
> . . .
>
> The court of appeals is limited to the findings of fact made by the trial court and may not find new facts or reweigh the evidence. . . .

Id. at ¶¶19-20.

¶11 In addition, Brigham City has previously forsaken an opportunity to shape the trial court's findings of fact.[1] Brigham City has not, however, challenged the trial court's factual findings. We therefore accept the findings as adopted and are in no position to supplement these findings. Thus, based upon the factual findings set forth in the trial court's order, we review the trial court's legal conclusion that no exigent circumstances existed in this case.

¶12 Brigham City next argues that the circumstances, as found by the court, clearly establish exigent circumstances supporting the officers' warrantless entry into the private residence. The trial court made the following findings of fact:

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[1] The trial court first directed Defendants to draft and submit an appropriate order. Brigham City, however, objected to the findings as drafted and proffered a substitution. Over Defendant's objections, the trial court adopted Brigham City's version of the order and findings. Therefore, any findings Brigham City considered necessary to support a conclusion of exigent circumstances should have been included in this order.

1. On July 23, 2001, at approximately 3:00 a.m., four Brigham City Polic[e] officers were dispatched . . . as a result of a call concerning a loud party.

2. After arrival at the residence, the officers, from their observations from the front of the residence, determined that it was obvious that knocking on the front door would have done no good. It was appropriate that they proceed down the driveway alongside the house to further investigate.

3. After going down the driveway on the side of the house, the officers could see, through a slat fence, two juveniles consuming alcoholic beverages. At that point, because of the juveniles, there was probable cause for the officers to enter into the backyard.

4. Upon entering the backyard, the officers observed, through windows and a screen door an altercation taking place, wherein it appeared that four adults were trying to control a juvenile. At one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose.

5. At that point in time, the court finds no exigent circumstances to justify the officer's entry into the residence. What he should have done, as required under the 4th amendment, was knock on the door. The evidence is that there was a loud, tumultuous thing going on, and the evidence is that the occupants probably would not have heard, but under the 4th amendment he has an obligation to at least attempt before entering.

¶13 After reviewing the trial court's ruling, we conclude that the trial court properly determined that the officers' warrantless entry into the private residence was not justified by the circumstances. The trial court found that some sort of altercation had occurred in the house, but made no findings from which we could reasonably conclude that the altercation posed an immediate serious threat or created a threat of escalating violence. Furthermore, the officers did not immediately physically intervene in the situation, draw weapons, or otherwise act in a manner suggesting an emergency. Neither do the trial court's findings support a conclusion that the destruction of evidence would have occurred, that the escape of any suspect was imminent, or that any legitimate law enforcement effort would have been frustrated had the officers not been granted immediate entry into the home. On these limited facts, we affirm the trial court's conclusion that exigent circumstances did not exist.[2]

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[2] In reaching its conclusion, the dissent relies upon *State v. Comer*, 2002 UT App 219, 51 P.3d 55, where police entered a home without a warrant in response to a domestic violence complaint. *Id.* at ¶23. In *Comer*, "admittedly a close case," we stated that "the officers had probable cause to believe a domestic violence offense had been, or was being, committed." *Id.* at ¶25. We noted that a "'domestic violence complaint' is 'one of the most potentially dangerous, volatile arrest situations confronting police.'" *Id.* (citations omitted). We identified the specific facts that would prompt the police to believe "there was no time to get a warrant and/or that [their] presence was necessary to prevent physical harm to persons or the destruction of evidence." *Id.* at ¶26. The combination of these factors warranted a finding of exigent circumstances. *See id.* The holding in *Comer*, however, should be narrowly construed, *see id.* at n.11 (characterizing the *Comer* opinion as adopting approach "for analyzing warrantless police entry into a private residence after receipt of a report of domestic violence at that residence") and only applies when the threat of continued domestic violence is present.

(Continued on following page)

¶14 Brigham City next argues that the officers were justified in entering this private residence because the officers observed, first-hand, the commission of a crime. Generally, absent exceptional circumstances or plain error, a party who fails to bring an issue to the trial court's attention is barred from asserting it on appeal. *See State v. Archambeau*, 820 P.2d 920, 922 (Utah Ct. App. 1991). Brigham City neither raised this argument to the trial court, nor argued plain error or exceptional circumstances on appeal. We therefore decline to address this argument.

CONCLUSION

¶15 Because we defer to the trial court's findings of fact and, to a limited extent, to the trial court's application of those facts to the law, we conclude that the trial court did not err in concluding that no exigent circumstances existed under these facts. Therefore, we affirm the trial court's grant of Defendants' Motion to Suppress all evidence resulting from the officer's entry into the private residence.

The case at bar is distinguishable from *Comer*, for this is not a "domestic violence" situation. Additionally, the trial court found that the juvenile who seemed to be causing the commotion was restrained when the police arrived. Thus, except for the fact that the juvenile's hand broke loose and "smacked one of the occupants of the residence in the nose," all violence had ceased by the time the officers arrived. Also, unlike *Comer*, the police in the case at bar had a clear view of the interior of the home and could have intervened had further violence ensued.

William A. Thorne Jr., Judge

¶16 I CONCUR:

Pamela T. Greenwood, Judge

BENCH, Judge (dissenting):

¶17 The outcome of this case is controlled by our recent decision in *State v. Comer*, 2002 UT App 219, 51 P.3d 55. In *Comer*, officers arrived at a home after receiving a call from a citizen that a family fight was in progress. *See id.* at ¶2. The defendant opened the door and stepped out onto the porch. *See id.* The officers explained to her why they were there and asked if anyone else was home. *See id.* The defendant did not respond, but "'immediately turned and walked back inside the residence.'" *Id.* The officers followed and discovered defendant's husband who had marks on his body indicating he had been assaulted. *See id.* at ¶3. While arresting the defendant for assault, the officers also discovered drugs and drug paraphernalia. *See id.* at ¶4.

¶18 We concluded that both probable cause and exigent circumstances existed to justify the officers' warrantless entry into the defendant's home. *See id.* at ¶27. We cited several reasons why the defendant's unexplained behavior "would cause an officer to reasonably believe there was no time to get a warrant and/or that his presence was necessary to prevent physical harm to persons or the destruction of evidence," including the officers' reasonable fear

that defendant retreated to "immediately resume the altercation reported." *Id.* at ¶26.

¶19 If, as we concluded in *Comer*, an individual's unexplained behavior and retreat posed an exigent circumstance, then certainly a fight in progress qualifies as an exigent circumstance. In this case, the officers responded to a citizen's call in the middle of the night about a "loud party or altercation." The trial court found that the fight they witnessed was so "loud" and "tumultuous" that the occupants of the residence could not have heard a knock at the door. The officers personally observed a group of adults restrain a juvenile, who broke loose one arm and "smacked one of the [adults] in the nose." These findings do not support the trial court's conclusion that the officers' warrantless entry into the home was not justified by exigent circumstances.[1]

¶20 The majority argues that *Comer* is distinguishable and should be narrowly construed to apply only to known incidences of domestic violence. I disagree that the exigent circumstances doctrine applies only to domestic violence situations. However, even assuming, as the majority does, that *Comer* only applies to domestic violence, this case is not distinguishable. The difference between a simple assault and a domestic violence assault is the relationship between the parties involved. From their vantage point outside the house, the officers in this case could not know whether any of the combatants in the house were "cohabitants" as defined by Utah Code Ann.

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[1] The officers might also have been justified in entering the residence pursuant to the emergency aid doctrine, a variant to the exigent circumstances exception. *See Salt Lake City v. Davidson*, 2000 UT App 12,¶10, 994 P.2d 1283.

§ 30-6-1 (Supp. 2002). Based on the fact that a juvenile and several adults were involved and that the altercation was occurring at a residence, it would be reasonable for the officers to assume that the altercation may have been domestic violence. Further, I cannot agree with the majority that the violence had ceased by the time the officers arrived. The officers testified to witnessing a loud, tumultuous altercation where one individual was being physically restrained and another had been struck. Even after entering the house, the officers had a difficult time getting the attention of the combatants. It is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further.

¶21 Alternatively, we could remand to the trial court for a finding on the city's assertion that the officers were justified in entering the house because a crime was being committed in their presence. The majority opinion does not address this argument, claiming that it was not raised before the trial court. However, the record reflects that the city did raise the issue to the trial court in the "Plaintiff's Response to Motion to Suppress." The city alleged that "the exigent circumstances which existed included obvious violations of the law in the plain view and presence of the officers." Because the trial court made no specific findings regarding violations of law, the case could be remanded with instructions to the trial court to address whether the officers were justified in entering the home because a crime was being committed in their presence.

¶22 Accordingly, under *Comer*, I would reverse the trial court's grant of Defendants' motion to suppress. Alternatively, my colleagues should remand for findings on

the city's argument that a crime was being committed in the presence of the officers.

Russell W. Bench, Judge

IN THE FIRST DISTRICT COURT,
BOX ELDER COUNTY, STATE OF UTAH

BRIGHAM CITY, A Municipal Corporation, Plaintiff, v. CHARLES W. STUART, SHAYNE R. TAYLOR, and SANDRA A. TAYLOR, Defendants.	ORDER ON MOTION TO SUPPRESS EVIDENCE Case No. 001100454, 001100456, and 001100460 Judge Clint S. Judkins

This matter came before the court for hearing the 23rd day of March, 2001 on defendants' motion to suppress. Brigham City was represented by James Merrell. Defendants were present and represented by Rod Gilmore. After the presentation of evidence, including testimony and exhibits, the careful review of the parties' pleadings, and after having heard the parties' arguments, the Court hereby finds and orders as follows:

FINDINGS OF FACT

1. On July 23, 2001, at approximately 3:00 a.m., four Brigham City police officers were dispatched to 1074 Orchard St. in Brigham City as a result of a call concerning a loud party.

2. After arrival at the residence, the officers, from their observations from the front of the residence, determined that it was obvious that knocking on the front door would

have done no good. It was appropriate that they proceed down the driveway alongside the house to further investigate.

3. After going down the driveway on the side of the house, the officers could see, through a slat fence, two juveniles consuming alcoholic beverages. At that point, because of the juveniles, there was probable cause for the officers to enter into the backyard.

4. Upon entering the backyard, the officers observed, through windows and a screen door, an altercation taking place, wherein it appeared that four adults were trying to control a juvenile. At one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose.

5. At that point in time, the court finds no exigent circumstances sufficient to justify the officer's entry into the residence. What he should have done, as required under the 4th amendment, was knock on the door. The evidence is that there was a loud, tumultuous thing going on, and the evidence is that the occupants probably would not have heard him, but under the 4th amendment he has an obligation to at least attempt before entering.

ORDER

Based upon the above findings, and for good cause shown, the Court HEREBY ORDERS:

The Motion to Suppress filed by defendants is GRANTED. All evidence gathered or seized subsequent to the officers' entry into the house, including but not limited to physical evidence, photographs taken, observations made by the officers, and statements and actions made by

the suspects, are HEREBY SUPPRESSED, and not admissible in any further proceeding against the defendants.

DATED, this the 18 day of May, 2001.

BY THE COURT:

/s/
District Court Judge

FILED
UTAH APPELLATE COURTS
JUL 18 2005

IN THE UTAH SUPREME COURT

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Brigham City,

Petitioner,

v. Case No. 20021004-SC

Charles W. Stuart, Shayne R. Taylor, and Sandra A. Taylor,

Respondents.

ORDER

This matter is before the court upon appellant's petition for rehearing, filed on March 18, 2005. By request of the court, the appellees' response to the petition for rehearing was filed on June 6, 2005.

IT IS HEREBY ORDERED that pursuant to Rule 35 of the Utah Rules of Appellate Procedure the petition for rehearing is denied.

For The Court:

July 18, 2005
Date

/s/
Christine M. Durham
Chief Justice

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No. 05-502

Supreme Court, U.S.
FILED
NOV 16 2005
OFFICE OF THE CLERK

In The
Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Utah

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Wayne R. LaFave, 3 *Search & Seizure* §6.6 (4th ed. 2005) 2, 3

RESPONSE TO PETITIONER'S STATEMENT OF FACTS

For purposes of this appeal, the Respondents Charles Stuart and Sandra Taylor adopt the factual allegations as outlined and adopted by the Utah Supreme Court in this matter.

SUMMARY OF ARGUMENT

This matter has come before the Court on a Petition for Writ of Certiorari based on an alleged misapplication by three different Utah state courts in their application of the Fourth Amendment to the United States Constitution. However there is no misapplication of this Amendment, there is no significant controversy so as to warrant this matter being heard, and there is ample legal support for the three different Utah courts in their decision denying the application of the emergency aid exception to the Fourth Amendment as sought by the State in this matter.

ARGUMENT

I. A large majority of cases support the fact that there is an objective standard that must be applied by police officers in making an emergency aid intrusion into a home

It is a firmly entrenched legal principle that a person is protected from unreasonable searches of their home and person, and that warrantless searches are *per se* unreasonable. U.S. Const. Amend. IV; *Katz v. United States*, 389 U.S. 347, 357 (1967). However, there are some exceptions

to this principle. One of those exceptions is the emergency aid exception.

The seminal state appellate case related to the emergency aid exception to the Fourth Amendment was decided almost thirty years ago. *People v. Mitchell*, 347 N.E.2d 607 (N.Y. Ct. App. 1976). In this case, the state court discussed and applied the emergency aid exception to the Fourth Amendment. The Court announced certain requirements in this exception's application. These are: (1) law enforcement must have reasonable grounds to believe there is an emergency which needs their immediate assistance to protect life or liberty; (2) any search under this exception must not be primarily motivated by an intent to arrest a person or seize evidence; and (3) there has to be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. *Id.* at 609 (citations omitted). A reading of *Mitchell* shows that this is an objective standard. *Id.* at 609-10. *See also*, Wayne R. LaFave, 3 *Search & Seizure* §6.6(a) (4th ed. 2005).

This Court has itself implicitly approved *Mitchell*. *Mincey v. Arizona*, 437 U.S. 385 (1978). The Court noted that a search under the emergency aid exception to the Fourth Amendment may be allowed to protect or preserve life or avoid serious injury. *Id.* at 392. A number of courts since *Mitchell* and *Mincey* have addressed the emergency aid exception to the Fourth Amendment, and applied the *Mitchell* standards in an objective manner. *Strange v. City of Tuscaloosa*, 652 So.2d 773, 776 (Ala. Ct. App. 1994); *In re Sealed Case 96-3167*, 153 F.3d 759, 766 (D. D.C. 1998); *People v. Hebert*, 46 P.3d 473, 480 (Colo. 2002); *Gallmeyer v. State*, 640 P.2d 837, 842 (Alaska Ct. App. 1982); *State v. Macelman*, 834 A.2d 322, 326 (N.H. 2003); and *State v.*

Yoder, 938 P.2d 534, 540 (Utah Ct. App. 1997). While the sixteen jurisdictions cited by counsel on both sides of this issue is not exhaustive, it is clear that courts apply an objective standard to the *Mitchell* guidelines. As such, there is no conflict or question left unanswered concerning the objective standards applied by courts throughout the country.

II. While courts may have a different view concerning the gravity of the emergency or exigency necessary to justify a warrantless search, the difference does not rise to the level requiring a decision by this Court

There are many cases which demonstrate the level of gravity which is necessary in applying the emergency aid exception to the Fourth Amendment. *See generally*, LaFave at §6.6(a). *See also*, *Turner v. State*, 645 So.2d 444, 447 (Fla. 1994) (a suicide attempt in the presence of law enforcement); *United States v. Presler*, 610 F.2d 1206, 1211 (4th Cir. 1979) (seeking a missing residential occupant); and *United States v. Goldenstein*, 456 F.2d 1006, 1010 (8th Cir. 1972) (seeking a person known to suffer from a gunshot). A key determination concerning the gravity of the situation is whether "[t]here are exigent circumstances in which police action literally must be now or never to preserve the evidence of the crime . . . " *Roaden v. Kentucky*, 413 U.S. 496, 505 (1973); *United States v. Turner*, 650 F.2d 526, 527 (4th Cir. 1981) (noting the degree of urgency is a factor that must be considered). Issues related to the gravity of a situation leading to the application of the emergency aid exception to the Fourth Amendment are fact specific, and appellate courts should be reluctant to overturn those determinations. *Minnesota v. Olson*, 495

U.S. 91, 100-01 (1990); *United States v. Thomas*, 372 F.3d 1173, 1177 (10th Cir. 2004). These types of cases usually involve felonies, and not misdemeanor offenses. However, courts are not silent on misdemeanor offenses.

Misdemeanor offenses are of not such a serious nature to disregard the requirements to exercise the emergency aid exception to the Fourth Amendment. *State v. Santiago*, 619 A.2d 1132, 1134 (Conn. 1993); *People v. Reinhardt*, 366 N.W.2d 245, 248 (Mich. Ct. App. 1985); *King v. City of Ft. Wayne, Ind.*, 590 F.Supp. 414, 422 (N.D. Ind. 1984); *State v. Lee*, 457 N.E.2d 377, 379-80 (Ohio 1983); and *Prather v. State*, 182 So. 2d 273, 276 (Fla. 1966).

In the matter before this Court, the offenses were misdemeanors. They were not the type of misdemeanor offenses claimed by the Petitioner to show a lack of direction by courts in determining the level of gravity which is necessary to exercise the emergency aid exception to the Fourth Amendment. A review of the record by the Utah Supreme Court shows the circumstances were not severe enough to warrant the application of the emergency aid exception to the Fourth Amendment. *Brigham City v. Stuart*, No. 20021004, 2005 WL 387966 at *26 (Utah Feb. 18, 2005). The police officers did not give medical aide to anybody in the home, but instead only acted in their law enforcement capacity and instituted arrests. The altercation was a minor one. *Id.* It did not begin to rise to the levels noted in *Turner*, *Presler*, or *Goldenstein*. Lastly, as the Utah Supreme Court notes, "[t]he circumstances known to the officers at the time of entry did not create a reasonable belief that emergency aid was required." *Id.* at *27.

There is no deep and intractable conflict looking for any type of resolution on this issue. The cases show well-established guidance for law enforcement and the courts in determining the gravity of a situation in making an emergency aid exception to the Fourth Amendment. This guidance appropriately balances the needs of law enforcement with the Fourth Amendment protections.

III. The officers' disregard of the Fourth Amendment for a non-emergency situation was unreasonable

It is well-established principle that citizens have a heightened sense of privacy in their homes. *Yoder*, 935 P.2d at 540 (citation omitted). As discussed *supra*, the *Mitchell* standard governs the present matter. In the matter before the Court the officers were able to tell there was no immediate threat that would justify an entrance into the home with its accompanying heightened sense of privacy. They did not make any attempt to gain the occupant's attention. Nor are there the serious circumstances discussed in *Turner*, *Presler*, or *Goldenstein*. Based on the minimal altercation, and applying the Fourth Amendment protections to the present matter, the entry of the officers was unreasonably intrusive.

CONCLUSION

While the State of Utah may not agree, the law is well settled on the issue of using the emergency aid exception to the Fourth Amendment to gain entry into a home. This is a high standard, which has not been met in this case.

There was no emergency that warranted such an entry for a misdemeanor offense.

Nor are the courts sufficiently divided to warrant a decision from this Court. The emergency aid doctrine is well established and gives law enforcement the ability to perform their necessary duties without infringing on the Fourth Amendment protections.

Based on the above and foregoing, the City's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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No. 05-502

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In The
Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

v.

CHARLES W. STUART,
SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Petition For Writ Of Certiorari To The Utah Supreme Court

REPLY BRIEF FOR BRIGHAM CITY

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REPLY BRIEF FOR BRIGHAM CITY

The Utah Supreme Court decided a question that this Court left unresolved in *Mincey v. Arizona*, 437 U.S. 385 (1978): the standard by which emergency aid entries should be judged. Courts are deeply divided on this issue. Some strictly adhere to the objective standard traditionally applied in Fourth Amendment cases. Others, including the Utah Supreme Court, apply a test that also examines the officer's subjective motivations for taking action. Others apply a test that is ambiguous on the issue. This Court should definitively resolve the issue now because, contrary to respondents' contentions, the inquiry into an officer's actual motivations for taking action is fundamentally at odds with this Court's Fourth Amendment jurisprudence.

The Utah Supreme Court also confronted an issue that has vexed lower courts since this Court's decision in *Welsh v. Wisconsin*, 466 U.S. 740 (1984): how serious must the harm or wrongdoing be to justify a warrantless entry? Because police frequently encounter ongoing violence in a home when responding to disturbances, this Court should resolve the confusion.

1. The *Mitchell* Analysis Employs a Subjective Test That Squarely Conflicts With This Court's Fourth Amendment Jurisprudence.

Respondents incorrectly assert that the three-part test adopted by the Utah Supreme Court, and first articulated in *People v. Mitchell*, 347 N.E.2d 607 (N.Y. 1976), "is an objective standard." Brf. in Opp. at 2. It is true that under part one of the test, an officer's actions must be objectively reasonable. Pet. App. at 12; *accord Mitchell*, 347 N.E.2d at 609. The City has not argued otherwise. But even if an

officer's action is objectively reasonable, the exception does not apply unless the government shows that the officer's "search [was] not primarily motivated by intent to arrest and seize evidence" (part two). Pet. App. at 12; *accord Mitchell*, 347 N.E.2d at 609. By its plain terms, this is a subjective test that requires an examination of an officer's actual motivations for taking action.

Respondents incorrectly assert that *Mincey* "implicitly approved *Mitchell*." Brf. in Opp. at 2. *Mincey* cited *Mitchell* and other cases as recognizing an emergency aid exception. 437 U.S. at 392-93 & n.6. But contrary to respondents' claim, *Mincey* did not implicitly approve *Mitchell's* holding. To the contrary, the Court expressly stated that by citing *Mitchell* and the other cases, it "d[id] not mean to approve the specific holding of each case." 537 U.S. at 393 n.6.

Indeed, *Mitchell's* inquiry into an officer's motivation squarely conflicts with this Court's Fourth Amendment jurisprudence. This Court has "never held, outside the context of inventory search or administrative inspection . . . , that an officer's motive invalidates objectively reasonable behavior under the Fourth Amendment; but [the Court] ha[s] repeatedly held and asserted the contrary." *Whren v. United States*, 517 U.S. 806, 812 (1996). As aptly noted by the *amici*, Brf. of Amici at 5-6, the Court reaffirmed this principle in *Devenpeck v. Alford*, 543 U.S. 146, 125 S.Ct. 588, 593-94 (2004).

Respondents claim that no conflict exists. Brf. in Opp. at 3. Yet, as noted in the City's petition, both state courts and federal courts are split on whether officer motivation is relevant to the analysis. *See* Pet. at 8-11. Other courts have failed to identify a clear standard. For example, five

circuit courts of appeal recognize an emergency aid exception, but articulate a standard that is ambiguous on the issue. They recognize an emergency exception if police "reasonably believe" an emergency exists or if police have an "objectively reasonable belief" an emergency exists. *See United States v. Martins*, 413 F.3d 139, 147 (1st Cir. 2005); *United States v. Holloway*, 290 F.3d 1331, 1337 (11th Cir. 2002); *Tierney v. Davidson*, 133 F.3d 189, 196-97 (2nd Cir. 1998); *Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1244-45 (7th Cir. 1994); *United States v. Moss*, 963 F.2d 673, 678 (4th Cir. 1982). The language that the exception applies if an officer possesses a reasonable belief of an emergency suggests that an officer's state of mind plays a role under the test. However, the courts' analyses make such a conclusion far from clear. *See Martins*, 413 F.3d at 147 (examining the facts confronting the officer without regard to the officer's motivations); *Holloway*, 290 F.3d at 1337-38 (observing that an officer's motivation in rendering aid is different than when searching for evidence, but suggesting that the same objective probable cause standard applies); *Tierney*, 133 F.3d at 196-98 (citing an objective standard but examining officer's purpose for entry); *Sheik-Abdi*, 37 F.3d at 1244-45 (concluding that emergency entries may not be used as a pretext to effect an in-home arrest, but looking to objective facts, not officer motivation, in determining whether search was pretextual); *Moss*, 963 F.2d at 678 (determining whether officer's entry was a pretext based on scope of action).

In sum, *Mincey* recognized that "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" 437 U.S. at 392-93 (citation omitted). But it left unresolved the standard by which such entries should be judged. This Court should resolve the conflict and confusion that has arisen in the ensuing 27 years.

2. The Acknowledged Differences Among the Courts Regarding the Gravity of Harm or Wrongdoing Necessary to Justify a Warrantless Entry Should Not Be Tolerated.

Respondents acknowledge that "courts may have a different view concerning the gravity of the emergency or exigency necessary to justify a warrantless search," but they seek to downplay this confusion by saying that the "[i]ssues related to the gravity of the situation . . . are fact specific, and appellate courts should be reluctant to overturn those determinations." Brf. in Opp. at 3.

As in all Fourth Amendment cases, the Utah Supreme Court's decision ultimately turned on the specific facts of the case. But the Utah court did not treat its decision as limited to a narrow set of facts. It held that emergency aid entries may not be made unless the officer reasonably believes "'that an unconscious, semi-conscious, or missing person feared injured or dead' is in the home." Pet. App. at 13 (citation omitted). It further held that "exigent circumstance" entries must be based on an offense more serious than a misdemeanor assault. *See* Pet. App. at 15-19. As noted in the City's petition, this demarcation highlights the existing confusion among lower courts in their assessment of the gravity of harm or wrongdoing that will justify a warrantless entry. Pet. 11-14.[1]

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[1] This Court's decision in *Illinois v. McArthur*, 531 U.S. 326 (2001), could be read as deciding the issue in favor of permitting warrantless action by police where the crime involved is any "jailable" offense. However, because police did not enter McArthur's home, but simply prevented him from going in while police secured a warrant, the issue of whether an *entry* by police is permissible for any jailable offense has not been decided.

The Utah Supreme Court's decision also highlights the existing "uncertain[ty] [as to] whether the circumstances that may give rise to 'emergencies' are less [or in this case, more] circumscribed than those that constitute 'exigent circumstances.'" *Sheik-Abdi*, 37 F.3d at 1244-45.

As noted by the sixteen amici states and three amici counties, "police responding to disturbance calls regularly confront incidents of violence in the premises" of a home. Brf. of Amici at 2. It is imperative that officers be guided by a uniform and rational standard. This Court should end the uncertainty.

CONCLUSION

For the reasons stated above and in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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No. 05-502

In the Supreme Court of the United States

BRIGHAM CITY, UTAH, PETITIONER

v.

CHARLES W. STUART, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. Whether, when law enforcement officers enter a residence in response to what reasonably appears to be an emergency, the constitutionality of their warrantless entry under the Fourth and Fourteenth Amendments turns upon the officers' subjective motivation.

2. Whether an ongoing and tumultuous fight that has disrupted neighbors at 3:00 in the morning constitutes the type of emergency that would render a warrantless entry into the home constitutional under the Fourth and Fourteenth Amendments.

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In the Supreme Court of the United States

No. 05-502

BRIGHAM CITY, UTAH, PETITIONER

v.

CHARLES W. STUART, ET AL.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF UTAH

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case presents the questions (i) whether the constitutionality of a warrantless entry into a home in an emergency turns on the officers' subjective motivations, and (ii) whether officers' observation of an ongoing violent altercation inside a residence justifies a warrantless entry. Federal law enforcement officers make warrantless entrances into residences in emergencies that pose a threat to life and safety, such as when responding to the sound of gunshots, intervening when ongoing domestic violence or child abuse is overheard, rescuing kidnapping victims, or searching for hurricane victims. In addition, the federal government prosecutes cases in which evidence has been obtained by state and local police officers during entries into residences in emergency situations. The United States thus has a substantial interest in the Court's disposition of this case.

STATEMENT

1. On July 23, 2001, at approximately 3:00 a.m., four Brigham City, Utah, police officers responded to a complaint about a loud party at a private residence. Pet. App. 46. After witnessing two underage males drinking alcohol, *id.* at 2, the officers entered the backyard. From there, the officers could see an ongoing, "loud, tumultuous," and "belly igerent" altercation involving four adults and a juvenile in the kitchen. *Id.* at 4; Def. Mem. in Support of Mot. to Suppress 2; see Pet. App. 2-3. At one point, the juvenile "swung a fist and struck one of the adults in the face." Pet. App 2. The adults "struggle[d] to regain control of the juvenile." *Id.* at 18. Two officers "opened the screen door and 'hollered' to identify themselves," but "no one heard them." *Id.* at 2. The officers then entered the kitchen, but still "had to shout above the din multiple times before the occupants became aware of their presence." *Id.* at 32. The officers subsequently took the adults, all of whom were guests in the home, into custody and charged them with disorderly conduct, intoxication, and contributing to the delinquency of a minor. *Id.* at 3; Def. Mem. in Support of Mot. to Suppress 1.

2. Respondents moved to suppress evidence obtained from the officers' entry and the subsequent arrest. The trial court granted the motion. Pet. App. 46-48. The court held that the officers had probable cause to enter the backyard. *Id.* at 47. The court also acknowledged that "there was a loud, tumultuous thing going on," and that, as a result, "the occupants probably would not have heard" the officers if they had knocked. *Ibid.* The court nevertheless ruled that no exigent cir-

cumstances justified the entry into the house without the officers first knocking. *Ibid.*

3. A divided Utah Court of Appeals affirmed. Pet. App. 34-45. The majority held that the altercation did not "pose[] an immediate serious threat or create[] a threat of escalating violence," in part because "this is not a 'domestic violence' situation." *Id.* at 40-41 & n.2.

Judge Bench dissented, Pet. App. 42-45, considering it "nonsensical to require officers charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further," *id.* at 44.

4. a. The Utah Supreme Court affirmed. Pet. App. 1-33. The court held unanimously that the officers' entry was not justified to render "emergency aid," *id.* at 11-15, 27, 33, but was closely divided on the question whether exigent circumstances supported the entry, *id.* at 15-25, 26-33.

With respect to the emergency aid doctrine, the court ruled that a warrantless entry was not authorized because the officers lacked an "objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead [was] in the home." Pet. App. 13 (internal quotation marks omitted). The court further held that the "paramount" purpose of the intrusion must be to "enhance the prospect of administering appropriate medical assistance," *ibid.* (citation omitted), for a "serious bodily injury," *id.* at 14. The officers' entry in this case, the court held, failed that test because the officers entered to "arrest[] the adults for alcohol related offenses, and provid[ed] no medical assistance whatsoever." *Ibid.*

The supreme court also held that exigent circumstances did not justify the entry. At the outset, the court ruled that the officers had probable cause to enter

the house based on "the blow struck by the juvenile," but that the blow did not justify a warrantless entry. Pet. App. 9. While acknowledging that the distinction is "artificial and simplistic," the court explained that the requirements of exigent circumstances, rather than the emergency aid doctrine, apply when police "are pursuing a law enforcement mission, not acting as caretakers." *Id.* at 16. The court then held that the adults' "assault" on the juvenile and the juvenile's assault on one of the adults were insufficient to establish exigent circumstances. *Id.* at 19. The court reasoned that persons in a residence may "engage in acts that meet the legal definition of assault, thereby creating probable cause," that the police are powerless to stop in the absence of a warrant. *Id.* at 18. The court also "speculat[ed]" that the officers might have been able to "quell[] the disturbance by making their presence known" through the screen door. *Id.* at 20. The court then concluded that the officers committed constitutional error by "announc[ing] their presence" inside rather than outside the screen door. *Ibid.*

b. Judge Durrant, joined by Judge Wilkins, dissented from the holding that exigent circumstances did not support the entry. Pet. App. 25-33. The dissent reasoned that the Constitution does not require police officers "who personally witness an ongoing physical altercation in a residence" to "be spectators in the face of ongoing violence" and "remain rooted onlookers, waiting passively for violence to escalate to a point at which severe harm is likely to occur." *Id.* at 26.

SUMMARY OF ARGUMENT

The Fourth Amendment permits officers to enter a residence without a warrant when, under all of the circumstances, a reasonable officer could conclude that an impending threat to life or safety warrants intervention and when the scope of the intrusion is reasonable in relation to the nature of the emergency. Whether the officers were subjectively motivated to enforce the law or to render aid has no constitutional relevance. This Court has repeatedly refused to import into the Fourth Amendment's mandate of reasonableness an inquiry into the mindset of individual police officers making split-second judgments in the midst of rapidly evolving events. No different rule should apply here. Evenhanded law enforcement and protection against arbitrary action are best achieved by focusing on the objective justifications for an officer's actions, not on his subjective intent.

The entry in this case was objectively reasonable. The loud and tumultuous five-person fight that the police saw and heard posed a reasonable risk of harm to the lives and safety of those inside the home. The disruption of neighbors in the middle of the night, combined with evidence of alcohol abuse, gave no sign of abating and, in fact, posed a reasonable risk of escalating. Indeed, domestic disputes as a class—especially those that involve alcohol or drugs—pose a significant risk of injury to both the participants and the police. The common law has long permitted entry in such circumstances to protect life and safety. The Fourth Amendment does the same.

ARGUMENT

I. THE FOURTH AMENDMENT PERMITS A WARRANTLESS HOME ENTRY WHEN THERE IS A REASONABLE BASIS TO CONCLUDE THAT A THREAT TO LIFE OR SAFETY NECESSITATES POLICE INTERVENTION AND THE SCOPE OF THE INTRUSION IS REASONABLE

The Fourth Amendment, made applicable to the States through the Fourteenth Amendment, *Payton* v. *New York*, 445 U.S. 573, 576 (1980), provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV.

The "essential purpose" of the Fourth Amendment's proscriptions "is to impose a standard of 'reasonableness' upon the exercise of discretion" by law enforcement "in order to safeguard the privacy and security of individuals against arbitrary invasions." *Delaware* v. *Prouse*, 440 U.S. 648, 653-654 (1979) (footnote and citation omitted); see *Illinois* v. *Rodriguez*, 497 U.S. 177, 186 n.* (1990). The "touchstone" of the constitutional inquiry is "the reasonableness in all the circumstances" of the law enforcement practice at issue. *Maryland* v. *Wilson*, 519 U.S. 408, 411 (1997) (citation omitted).

A. The Fourth Amendment Permits Warrantless Entries When Reasonably Undertaken To Protect Lives Or Safety

The Fourth Amendment embodies a strong preference for warrants before entry into or search of a home. See, *e.g.*, *Kirk* v. *Louisiana*, 536 U.S. 635, 636, 638 (2002) (per curiam). The Court has long recognized, however, that in some circumstances, such as the hot pursuit of a felon and the imminent destruction of evidence, "the exigencies of the situation" can give rise to a compelling need for prompt and thus warrantless entry. *Mincey* v. *Arizona*, 437 U.S. 385, 394 (1978).[1] Where fulfilling the law enforcement interests at stake will not brook the delay of obtaining a warrant, a warrantless entry and search of a home is permissible if the police officer's actions are "objectively reasonable under the Fourth Amendment." *Ibid.*

One circumstance in which a warrantless entry is objectively reasonable is when an entry is undertaken to protect human life and safety, such as when officers could "reasonably believe that a person within is in need of immediate aid." *Mincey*, 437 U.S. at 392.[2] "The Fourth Amendment does not require police officers to

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[1] See *Michigan* v. *Tyler*, 436 U.S. 499, 509-510 (1978) (entry for reasonable time to fight fire and investigate its source); *United States* v. *Santana*, 427 U.S. 38, 42-43 (1976) (hot pursuit); *Schmerber* v. *California*, 384 U.S. 757, 770-771 (1966) (imminent loss of evidence); see also *Camara* v. *Municipal Court*, 387 U.S. 523, 539 (1967) (prompt inspections without a warrant "in emergency situations").

[2] See *Flippo* v. *West Virginia*, 528 U.S. 11, 14 (1999) (per curiam); *Thompson* v. *Louisiana*, 469 U.S. 17, 21-22 (1984) (per curiam); *McDonald* v. *United States*, 335 U.S. 451, 454 (1948) (noting situation "where the officers, passing on the street, hear a shot and a cry for help and demand entrance in the name of the law").

delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others." *Warden* v. *Hayden*, 387 U.S. 294, 298-299 (1967); see *Wayne* v. *United States*, 318 F.2d 205, 212 (D.C. Cir.) (opinion of Burger, J.) ("[A] warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person."), cert. denied, 375 U.S. 860 (1963).

Police officers routinely perform community caretaking and public safety functions, in addition to their traditional law enforcement roles.[3] In any of those roles, police may encounter a variety of circumstances that can reasonably necessitate emergency, warrantless entries of a residence. For example, in the wake of a shooting or similar violence, police may need to search quickly for wounded victims, as well as to ensure that no hidden perpetrators remain who could continue the attack or ambush emergency medical personnel. In *Mincey*, *supra*, the Court affirmed the propriety of the law enforcement agents' decision, following a homicide, to "look[] about quickly for other victims" following a shooting, 437 U.S. at 388, and to "make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises," *id.* at 392. Cf. *Maryland* v. *Buie*, 494 U.S. 325, 327 (1990) (permitting a "protective sweep" to "protect the safety of police officers or others" incident to an arrest).[4]

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[3] See, *e.g.*, *Cady* v. *Dombrowski*, 413 U.S. 433, 441 (1973); 3 Wayne R. LaFave, *Search and Seizure* § 6.6, at 451 (4th ed. 2004).

[4] See also, *e.g.*, *United States* v. *Martins*, 413 F.3d 139, 145 (1st Cir.) (emergency entry proper based on "the location of one of the shooting victims immediately outside the apartment, the marijuana smoke within, and the presence of young, apparently unsupervised children"),

Officers also may develop a reasonable basis for concluding that an individual is suffering or in imminent danger of suffering harm when they respond to domestic violence calls, overhear screams or calls for "help," discover materials with a high risk of explosion, or learn the location of children or other vulnerable individuals who are in danger. See *United States* v. *Pachinger*, No. 04-10783 (11th Cir. Jan. 3, 2005), slip op. 3-8 (emergency entry to identify drugs taken by a juvenile who was in medical distress after being abducted and raped by the room's occupant), vacated on other grounds, 126 S. Ct. 240 (2005); *State* v. *Plant*, 461 N.W.2d 253, 259-260, 262-263 (Neb. 1990) (emergency entry proper where three young children either "were unaccounted for and had been left unattended for several hours," or else were in the custody of abusive father who was suspected of beating their infant sibling to death earlier that day).[5]

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cert. denied, 126 S. Ct. 644 (2005); *United States* v. *Chipps*, 410 F.3d 438, 442-443 (8th Cir. 2005) (emergency entry proper where police received a report of an assault and found a 20 to 30 foot trail of blood leading to the defendant's house); *State* v. *Fisher*, 686 P.2d 750, 761-762 (Ariz.) (where police knew that a woman had been murdered and that the employee she had visited shortly before she was killed was missing, the "entry and search for other possible homicide victims falls within the emergency aid doctrine"), cert. denied, 469 U.S. 1066 (1984).

[5] See also *United States* v. *Martinez*, 406 F.3d 1160, 1162-1164 (9th Cir. 2005) (emergency entry warranted where a 911 call reported domestic violence, crying woman was outside, and screams continued from inside the house); *United States* v. *Rhiger*, 315 F.3d 1283, 1285, 1288 (10th Cir.) (emergency entry upheld to shut down power to a methamphetamine laboratory that "posed a threat of explosion to its inhabitants, to the agents present at the scene, and to the other residents in [the] immediate neighborhood"), cert. denied, 540 U.S. 836 (2003); *United States* v. *Koplin*, No. CR02-209R (W.D. Wash. Nov. 21, 2002), slip op. 2-6 (emergency entry of motel room upheld where police learned that a known child sex offender was traveling interstate with an

In addition, a 911 call, reports of dead or unconscious bodies, or requests for assistance from friends and family may lead officers reasonably to conclude that a person needs immediate aid, outside the context of criminal law enforcement. See *United States* v. *Bradley*, 321 F.3d 1212, 1215 (9th Cir. 2003) ("The possibility of a nine-year-old child in a house in the middle of the night without the supervision of any responsible adult is a situation requiring immediate police assistance."); *Wayne*, 318 F.2d at 213 (opinion of Burger, J.) (if police "ha[d] paused for a warrant with the risk that the 'unconscious

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unrelated 11-year-old girl and might be armed); *United States* v. *Brown*, No. ACM 31997, 1997 WL 119744, at *1-*3 (A.F. Ct. Crim. App. Mar. 4, 1997) (emergency entry justified where a "young boy 'ran through the door * * * [and] yelled that his dad was beating up his mother'"; telephone call was abruptly cut off; and bloodied victim appeared at the door), review denied, 48 M.J. 21 (C.A.A.F. 1997); *State* v. *Drennan*, 101 P.3d 1218, 1224-1225, 1232 (Kan. 2004) (emergency entry proper where defendant had a history of domestic violence, neighbor witnessed violence and heard a scream, "'a little bit of a ruckus,' and then silence"); *Benefiel* v. *State*, 578 N.E.2d 338, 345 (Ind. 1991) (emergency entry proper when police received reports that two missing girls were being held against their will), cert. denied, 504 U.S. 987 (1992); *State* v. *Collins*, 543 A.2d 641, 652 (R.I. 1988) (discovery of "an infant victim of a child snatching or kidnaping created an emergency or exigent circumstance permitting a warrantless entry"), overruled on other grounds by *State* v. *Rios*, 702 A.2d 889 (R.I. 1997); *State* v. *Boggess*, 340 N.W.2d 516, 524-525 (Wis. 1983) (entry proper where reliable report of severe child abuse "indicates a potential need for that child to receive immediate medical attention," and that "children would be subjected to further abuse at any time, which could have resulted in serious injury or even death"); *State* v. *Crabb*, 835 N.E.2d 1068, 1071 (Ind. Ct. App. 2005) (entry proper based on "credible evidence" that a small child was "being exposed to both risks from explosions due to the flammability of the chemicals used in producing methamphetamine and from the effects that ether can have on the respiratory system"); LaFave, *supra*, § 6.5(d) at 434-435 n.177.

woman' might die while papers were being drawn they could surely merit censure").[6]

While the circumstances giving rise to an emergency need for entry are varied, the constitutional rationale for permitting a warrantless entry is the same: the "need to protect or preserve life or avoid serious injury is justification for" any attendant intrusion on privacy. *Mincey*, 437 U.S. at 392 (quoting *Wayne*, 318 F.2d at 212 (opinion of Burger, J.)). "Precious as th[e] right" to privacy in the home is, "it must yield to" another individual's "right to be rescued from death or terrible harm." *State* v. *Carlson*, 548 N.W.2d 138, 143 (Iowa 1996). Moreover, such emergencies require "necessarily swift action predicated upon the on-the-spot observations of the officer on the beat[, which] * * * historically has not been, and as a practical matter could not be, subjected to the warrant procedure." *Buie*, 494 U.S. at 331-332.

B. The Existence Of An Emergency Justifying A Warrantless Entry Turns Upon An Objective Analysis Of The Reasonableness Of The Officers' Conduct, Not Their Subjective Motivation

The Utah Supreme Court joined a number of other courts in holding that an emergency entry to render aid

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[6] See also *United States* v. *Stafford*, 416 F.3d 1068, 1074 (9th Cir. 2005) (emergency entry upheld where police received two reports of a possible dead body, large quantities of blood, feces, and hypodermic needles, and evidence of a brawl); *Wofford* v. *State*, 952 S.W.2d 646, 651 (Ark. 1997) ("Frequently, the report of a death proves inaccurate and a spark of life remains, sufficient to respond to emergency police aid.") (quoting *Patrick* v. *State*, 227 A.2d 486, 489 (Del. 1967)); *State* v. *Blades*, 626 A.2d 273, 279-280 (Conn. 1993) (emergency entry proper where relatives reported victim missing, they repeatedly expressed concern for her welfare based on a history of domestic violence, defendant had given a "patently false reason" for sending his children away, and officer observed blood on the door).

requires officers to have as their predominant subjective purpose the provision of emergency aid, rather than criminal investigation, reasoning that the motive inquiry substitutes for a probable cause requirement and prevents exploitation of the exception.[7] That approach, however, has generated disarray in the case law and confusion for officers, with courts artificially dichotomizing emergencies into "exigent circumstances" entries when probable cause of a crime also exists, and "emergency aid" entries when it does not. See, *e.g.*, Pet. App. 11-17; *State* v. *Ryon*, 108 P.3d 1032, 1043 n.4 (N.M. 2005). Some courts have then tried to identify varying levels of urgency for the two classes, which in turn may require sifting through a list of "factors."[8] Some courts also insist that an "emergency aid" entry must be divorced from the officers' law enforcement role and treated as "community caretaking," while another ascribes to it a third, *sui generis* purpose.[9]

This Court should reject that enterprise, with its rarely fruitful (but invariably litigation-generating) search for a non-law-enforcement motive—a process

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[7] See, *e.g.*, Pet. App. 12, 14; *United States* v. *Cervantes*, 219 F.3d 882, 890 (9th Cir. 2000), cert. denied, 532 U.S. 912 (2001); *State* v. *Ryon*, 108 P.3d 1032, 1045-1046 (N.M. 2005); *People* v. *Hebert*, 46 P.3d 473, 478-479 (Colo. 2002); *State* v. *Mountford*, 769 A.2d 639, 645 (Vt. 2000); *People* v. *Ray*, 981 P.2d 928, 933 (Cal. 1999), cert. denied, 528 U.S. 1187 (2000); *People* v. *Mitchell*, 347 N.E.2d 607, 610 (N.Y.), cert. denied, 426 U.S. 953 (1976).

[8] See, *e.g.*, Pet. App. 13-14, 19; *Ryon*, 108 P.3d at 1043 n.4, 1044-1045; *Carlson*, 548 N.W.2d at 142.

[9] Compare Pet. App. 16; *Ryon*, 108 P.3d at 1042; *Hebert*, 46 P.3d at 478-479; *Ray*, 981 P.2d at 933 ("totally unrelated"); *id.* at 938 ("Any intention of engaging in crime-solving activities will defeat the * * * exception even in cases of mixed motives."); *Fisher*, 686 P.2d at 763, with *Mountford*, 769 A.2d at 643-644 n.*.

that the Utah Supreme Court itself acknowledged to be "artificial and simplistic" (Pet. App. 16). Cf. *United States* v. *Banks*, 540 U.S. 31, 36, 41 (2003) (rejecting effort to transform the Fourth Amendment's test of reasonableness under all the circumstances "into a set of sub-rules" or "categories and protocols"). The Court should adopt instead an objective inquiry into the reasonableness of emergency entries to protect lives and safety. That approach better conforms with the Constitution's textual command of reasonableness, more closely hews to this Court's precedent, will bring needed coherence to the law, and will make the boundaries of the exception more comprehensible and reliable for officers on the ground confronting situations "filled with confusion and ambiguity." *Wayne*, 318 F.2d at 212 (opinion of Burger, J.).[10]

1. This Court has held, "almost without exception," that whether the actions of police officers violate the Fourth Amendment depends upon "an objective assessment of an officer's actions in light of the facts and circumstances then known to him." *Scott* v. *United States*, 436 U.S. 128, 137 (1978). The officer's subjective motivation is irrelevant.

> [T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which

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[10] See *United States* v. *Holloway*, 290 F.3d 1331, 1337-1338 (11th Cir. 2002), cert. denied, 537 U.S. 1161 (2003); *Wayne*, 318 F.2d at 212 (opinion of Burger, J.) ("If we could expect that patrolmen from police cruisers would be able to pinpoint the instant when they stopped treating this as a civil emergency, if they did, and began thinking of it in criminal terms, we would be asking them to resolve, under pressure and in minutes, a most subtle and delicate legal and constitutional problem on which * * * judges cannot agree after months of study and deliberation.").

> provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.

Id. at 138.[11]

The Court has so ruled because, in the absence of a warrant, the Fourth Amendment is concerned with whether a search is "unreasonable," U.S. Const. Amend. IV, and that "concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." *Devenpeck* v. *Alford*, 543 U.S. 146, 153 (2004) (quoting *Whren* v. *United States*, 517 U.S. 806, 814 (1996)). Indeed, focus on "an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time, * * * and not on the officer's actual state of mind at the time" pervades Fourth Amendment law. *Maryland* v. *Macon*, 472 U.S. 463, 470 (1985) (quotation marks omitted).[12]

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[11] See *Bond* v. *United States*, 529 U.S. 334, 338 n.2 (2000) ("[T]he subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment * * *; the issue is not his state of mind, but the objective effect of his actions."); *Graham* v. *Connor*, 490 U.S. 386, 397 (1989) ("prior cases make clear" that the "subjective motivations of the individual officers * * * ha[ve] no bearing on whether a particular seizure is 'unreasonable' under the Fourth Amendment").

[12] See, *e.g.*, *Devenpeck*, 543 U.S. at 153 (an officer's "subjective reason for making the arrest" need not coincide with facts providing probable cause); *Ohio* v. *Robinette*, 519 U.S. 33, 38-39 (1996) (reasonableness of duration of a traffic stop); *Whren*, 517 U.S. at 813-815 (reasonableness of traffic stop); *Florida* v. *Jimeno*, 500 U.S. 248, 250-252 (1991) (scope of a consent to search); *Horton* v. *California*, 496 U.S. 128, 138 (1990) (observation of items in "plain view" need not be inadvertent); *United States* v. *Villamonte-Marquez*, 462 U.S. 579, 584 n.3 (1983) (brief, suspicionless detention of a ship for a documentation check not affected by the agents' motive to detect illegal drugs).

2. No different rule should apply to emergency entries that are based upon impending threats to life or safety. In discussing the "right of the police to respond to emergency situations," this Court has never suggested that either probable cause that a crime has been committed or a non-law-enforcement motive is the *sine qua non* of a lawful entry. *Mincey*, 437 U.S. at 392. The Court has required only a "reasonabl[e] belie[f]" or "objectively reasonable" basis for concluding that a person is in need of aid. *Id.* at 392, 394; see *Hayden*, 387 U.S. at 299-300 (where scope of emergency search was objectively reasonable, officer's failure to attest that his purpose was to search for weapons "can hardly be accorded controlling weight").

In fact, this Court has *never* applied a subjective motivation test to determine the constitutionality under the Fourth Amendment of actions taken by individual officers on the street and in the heat of rapidly developing events—especially when those circumstances threaten the safety of individuals. Quite the opposite, whenever the "on-the-spot observations of the officer on the beat" have required "necessarily swift action," this Court has consistently held the officer's conduct to the objective standard of the "reasonably prudent" officer, *Terry* v. *Ohio*, 392 U.S. 1, 20, 27 (1968). That approach has been applied to other types of warrantless searches of the home that, as here, are designed to protect the safety of individuals.[13] Similarly, the existence of other exigen-

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[13] See *Buie*, 494 U.S. at 334 (protective sweep of a home during an arrest where "articulable facts which, taken together, with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene"); *United States* v. *Robinson*, 414 U.S. 218, 225-226, 236 (1973) (scope of a search incident to arrest, which

cies, like hot pursuit or the destruction of evidence, has never been held to depend upon the subjective motivations of individual officers.[14]

Nor has the Court insisted that the actions of police in an emergency have no law enforcement function. Quite the opposite, *Mincey* approved a search for both the "killer" and "other victims" "when the police come upon the scene of a homicide." 437 U.S. at 392.[15] Likewise, for protective sweeps (*Buie, supra)* and searches incident to arrest (*Chimel* v. *California*, 395 U.S. 752 (1969)), no showing of either particularized probable cause of a crime or a non-law-enforcement motive is required before warrantless searches of parts of a home may be undertaken. Rather, the objectively reasonable need to protect lives and safety justifies protective sweeps and searches incident to arrest.

Even when an individual's "fundamental interest in his own life" is at stake, *Tennessee* v. *Garner*, 471 U.S. 1, 9 (1985), the Court has applied the same "objective

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may occur in a home, *Chimel* v. *California*, 395 U.S. 752, 763 (1969), does not turn upon "subjective" fears or concerns of officer).

[14] See *Santana*, 427 U.S. at 42-43 (entry based upon hot pursuit upheld without inquiry into subjective motive); *id.* at 43 (entry also justified by "realistic expectation" that evidence would be destroyed); *Schmerber*, 384 U.S. at 770 (blood test proper where officer "might reasonably have believed" that delay would result in destruction of evidence).

[15] See *Thompson*, 469 U.S. at 22; *Hayden*, 387 U.S. at 298-299 ("The Fourth Amendment does not require police officers to delay *in the course of an investigation* if to do so would gravely endanger their lives or the lives of others.") (emphasis added); see also *California* v. *Ciraolo*, 476 U.S. 207, 212 (1986) (rejecting respondent's challenge to "the authority of government to observe his activity from any vantage point or place if the viewing is motivated by a law enforcement purpose, and not the result of a casual, accidental observation").

reasonableness" standard to review an officer's determination that an individual "poses a threat of serious physical harm, either to the officer or to others" and thus that deadly force should be employed to seize the person and avert the harm. *Brosseau* v. *Haugen*, 543 U.S. 194, 197-198 (2004) (per curiam).[16]

Accordingly, there is no reason for undertaking an inquiry into subjective motive when officers make an entry based on circumstances that reasonably indicate the existence of an emergency. In the context of exigent-circumstances entries accompanied by probable cause of a crime, the central Fourth Amendment goal of avoiding arbitrary police intrusions is met by considering whether the facts known to the officer, viewed objectively, support a reasonable belief that a crime has been, is being, or is about to be committed, and whether the objective facts support immediate action. A parallel objective limitation serves the purpose of avoiding arbitrary action in the emergency aid context: the facts known to the officer must support an objectively reasonable belief that an emergency exists that warrants immediate action by authorities to protect life or safety, to neutralize a harm, or to render appropriate aid. An entry based on objective facts indicating a reasonable belief that there is a "need to act to protect or preserve life or avoid serious injury," *Mincey*, 437 U.S. at 392, is not

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[16] See *Graham*, 490 U.S. at 397 ("As in other Fourth Amendment contexts, * * * the 'reasonableness' inquiry in an excessive force case is an objective one."); see also *Terry*, 392 U.S. at 21-22 (for temporary seizure and pat-down to protect officer safety, "it is imperative that the facts be judged against an objective standard").

"unreasonable" under the Fourth Amendment, which is all the Constitution requires.[17]

The Utah Supreme Court suggested that an inquiry into an officer's subjective purpose is appropriate because the emergency aid doctrine is a "less demanding substitute for a warrant or the more traditional justifications for a warrantless search." Pet. App. 13. But properly understood, an entry to render aid is not based on a "less demanding" showing than a warrant, just a *different* showing. The factual predicate for an emergency-aid entry may or may not coincide with criminal activity, but it must always rest on known facts that make it objectively reasonable for an officer to believe that an immediate need for assistance exists. Once that predicate is met, any further inquiry into subjective motive holds all of the hazards in this context that it does in every other Fourth Amendment setting in which such an inquiry has been rejected.[18]

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[17] The only circumstances in which the Court has held that purpose may be relevant under the Fourth Amendment is when evaluating the "programmatic purpose[s]" of governmental bodies that have prescribed a "general scheme" of searches or seizures far in advance of events on the streets. *City of Indianapolis* v. *Edmond*, 531 U.S. 32, 46 (2000) (addressing a "checkpoint program" adopted by the city); see *Ferguson* v. *City of Charleston*, 532 U.S. 67, 84 (2001); *Whren*, 517 U.S. at 812. In *Edmond*, the Court emphasized that the purpose inquiry "is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene." 531 U.S. at 48; compare *id.* at 44 (invalidating program of stopping cars for narcotics-detection purposes along with traffic safety enforcement), with *Illinois* v. *Caballes*, 543 U.S. 405, 408-409 (2005) (upholding without any inquiry into purpose an individual officer's decision to add a drug-detection dog to a traffic stop).

[18] Indeed, one way to conceptualize the emergency aid situation is that the basic requirement that the police have an objectively reasonable belief—*i.e.*, probable cause—does not change, but the object

3. Injecting a subjective element into the Fourth Amendment's reasonableness inquiry for emergency entries to protect lives and safety would not only contravene precedent. It would also invite inconsistent and unpredictable application and chill sound police practices. Subjective inquiries necessarily import variability and instability into the law. The "constitutionality of an [entry] under a given set of known facts will 'vary from place to place and from time to time.'" *Devenpeck*, 543 U.S. at 154 (quoting *Whren*, 517 U.S. at 815). Case law will offer little or no reliable guidance to officers who are "forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving" about the appropriateness of a search and entry, with the lives and safety of individuals (including officers) hanging in the balance. *Graham* v. *Connor*, 490 U.S. 386, 397 (1989). And officers on the ground can have little confidence that the judicial reconstruction of motives months later "in the peace of a judge's chambers" and "with the 20/20 vision of hindsight" will vindicate the hurried judgments they were forced to make with limited information and seconds to deliberate. *Id.* at 396. When, as often occurs (see, *e.g.*, Pet. App. 35), multiple officers with potentially multiple motives are involved, the inquiry becomes exponentially unwieldy.

Given that an erroneous judgment by officers may result in both the suppression of evidence and exposure to personal liability for the constitutional violation,[19] the

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of the probable cause does change. Rather than requiring an objectively reasonable basis for an officer to believe a crime has been or is about to occur, the officer needs an objectively reasonable basis to believe that an emergency need for assistance exists.

[19] See 42 U.S.C. 1983; *Bivens* v. *Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

inevitable consequence of such instability and complexity in the law will be hesitation by officers on the scene. And that hesitation could lead to serious and sometimes fatal consequences. For example, as the court here acknowledged, domestic violence calls are "one of the most common and volatile settings for serious injury or death." Pet. App. 22. Not surprisingly, almost all deaths and serious injuries suffered as a result of domestic relationships—*i.e.*, intimate partner and child abuse—occur inside homes, where the victims' ability to obtain the assistance of anyone other than intervening police is remote.[20] Disturbance calls—60% of which involve domestic disputes—also account for almost 31% of all assaults on police officers, and domestic violence calls account for nearly 10% of all officer deaths. U.S. Dep't of Justice, *Law Enforcement Officers Killed and Assaulted: 2003*, at 18-22 (2004).[21]

Those costs are not offset by any discernible constitutional gain in having the lawfulness of entries turn upon later-litigated subjective purposes. If the objective circumstances point to an emergency and officers enter to assist, the infringement on privacy is identical regardless of the subjective state of mind of the individual officers. Inquiries into motives also make the Fourth Amendment's protection "arbitrarily variable." *Devenpeck*, 543 U.S. at 154. "[E]venhanded law enforcement is best achieved by the application of objective

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[20] Matthew R. Durose et al., U.S. Dep't of Justice, *Family Violence Statistics* 9 (2005).

[21] See *Boggess*, 340 N.W.2d at 526 ("But the house was not just the abuser's home, it was also the home of these two children and they had a right to * * * protection and help."). In this case, there is no evidence in the record that the actual owners of the home objected to the officers' entry to bring their unruly guests under control.

standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton* v. *California*, 496 U.S. 128, 138 (1990).[22]

Some courts have reasoned that probing the officers' motivation prevents pretextual claims of an emergency basis for entry.[23] But "that interest is already served" by the requirements that an impending threat to life or safety objectively exist and that the scope of the entry and search "be circumscribed by the exigencies which justifi[ied] its initiation." *Horton*, 496 U.S. at 139-140 (citing *Mincey*, 437 U.S. at 393).[24] That is particularly true here, because it is commonly the independent actions of third parties—911 calls, cries of "help," gunshots—that trigger an emergency entry. The existence of an objectively reasonable threat to life or safety, in other words, is not particularly amenable to convenient self-generation by the police.

There also is no evidence that, for all its downsides, the inquiry into officers' purposes does any constitutional work. We have found *no* case in which a court

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[22] See *Graham*, 490 U.S. at 397 ("An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good intentions make an objectively unreasonable use of force constitutional."); *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 312 (1978) ("If the government intrudes * * *, the privacy interest suffers whether [or not] the government's motivation is to investigate violations of criminal laws.").

[23] See, *e.g.*, *Cervantes*, 219 F.3d at 890; *Ryon*, 108 P.3d at 1045-1046; *Mountford*, 769 A.2d at 645.

[24] See *Hayden*, 387 U.S. at 299; *United States* v. *Russell*, No. 04-10681, 2006 WL 213853, at * 6 (9th Cir. Jan. 30, 2006) (two-minute search of "only areas in which a potential criminal could have been hiding in wait and areas in which an additional victim would have been"); *Rhiger*, 315 F.3d at 1290 (emergency entry limited to preventing explosion; search warrant required for a full search).

held that officers were objectively reasonable in effecting and conducting an emergency entry, but nevertheless violated the Fourth Amendment solely because they lacked a proper motive. Rather, findings of improper motive consistently trail after a ruling that either the decision to go in or the scope of the search was not objectively reasonable.[25] There is no sound basis for breaking from precedent and constitutionalizing under the Fourth Amendment a subjective element that could cost so much to accomplish so little.

II. A WARRANTLESS ENTRY TO STOP AN ONGOING ALTERCATION THAT INCLUDES PHYSICAL ASSAULTS IS OBJECTIVELY REASONABLE

The Utah Supreme Court held that the ongoing physical assault that the officers witnessed "fell short" of justifying an emergency entry because no "*serious* physical injury" had yet been suffered. Pet. App. 13-14; see *id.* at 13 (requiring reasonable belief that an "'unconscious, semi-conscious, or missing person feared injured or dead' is in the home"). That standard is too grudging and, indeed, consigns the police to waiting for dangers to escalate rather than intervening to prevent harm. A warrantless entry is constitutional when, under the totality of the circumstances, the officer reasonably could conclude that intervention is needed to remedy or prevent an impending threat to human life and safety.

A. Police May Take Reasonable Action To Prevent Injury

The Fourth Amendment does not restrict police to the post hoc administration of first aid. Emergency en-

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[25] See, *e.g.*, *Root* v. *Gauper*, 438 F.2d 361, 365 (8th Cir. 1971); *Ryon*, 108 P.3d at 1047-1049; *Ray*, 981 P.2d at 934-938; *United States* v. *Gammon*, 16 M.J. 646, 647-648 (A.F.C.M.R. 1983); *State* v. *Heumiller*, 317 N.W.2d 126, 129 (S.D. 1982).

tries to protect individuals from impending injury are also objectively reasonable. In *Mincey*, the Court "d[id] not question" the right of the police to enter to "*avoid* serious injury," as well as to aid those already injured. 437 U.S. at 392 (emphasis added); see also *Hayden*, 387 U.S. at 299 (emergency entry proper to uncover weapons that "*could* be used against them") (emphasis added); *In re Sealed Case*, 153 F.3d 759, 767 (D.C. Cir. 1998) ("They did not have to wait until they heard shots fired or an occupant scream. By that time, the purpose of permitting immediate entry—preventing such shots and screams—would have been lost.").

That makes sense. The actual spillage of blood or descent into unconsciousness is neither a per se doctrinal nor logical prerequisite to the reasonableness of action under the Fourth Amendment. See *Buie*, *supra* ("protective" sweeps of homes); *Terry*, *supra* (authorizing protective pat downs). Quite the contrary, by ordinary understanding, it would be *unreasonable* for police to stand passively outside a screen door watching and waiting until a trigger is actually pulled or multiple life-endangering blows are thrown before acting.

B. Ongoing Physical Violence Justifies A Warrantless Entry

The Utah Supreme Court reasoned (Pet. App. 19) that the "degree of harm suffered by the adult victim" of the punch was insufficient to justify a warrantless entry. But a quasi-medical assessment of the "degree of harm" to which ongoing violence has risen provides a "very unsatisfactory line[] to require police officers to draw on a moment's notice." *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 350 (2001) (internal quotation marks omitted). First, the resort to physical force sufficiently diminishes the prospect that those involved will resolve the dispute

safely, lawfully, and peacefully on their own, as to justify the intervention of the police. See *Roaden* v. *Kentucky*, 413 U.S. 496, 505 (1973) (warrantless entry may be proper when "assault is being perpetrated"). That is particularly true when, as here, the dispute disrupts neighbors in the middle of the night for a prolonged period of time.[26]

Second, the "serious bodily injury" test is unworkable because "an officer on the street might not be able to tell" with split-second accuracy how serious an injury is. *Atwater*, 532 U.S. at 348. Sometimes a blow to the head causes only a nosebleed; sometimes it causes the

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[26] Whether or not violence is involved, when homeowners or (as here) their guests engage in behavior so disruptive that it trenches upon the privacy of others and disturbs the peace of the neighborhood, that conduct reduces any reasonable privacy expectation that the revelers would be left to their own devices, at least to the extent that the police entry is limited to halting the disturbance. Respondents thus "undermined [their] right to be left alone by projecting loud noises into the neighborhood in the wee hours of the morning," so that the police could not protect their "interest in maintaining the privacy of [the] home without diminishing [the] neighbors' interest in maintaining the privacy of *their* homes. *United States* v. *Rohrig*, 98 F.3d 1506, 1522 (6th Cir. 1996); *Noone* v. *City of Ocean City*, 60 Fed. Appx. 904, 910 (3d Cir. 2003) (unpub.) (where police observed underage drinking and violation of a noise ordinance, "[t]he governmental interest in abating these illegal activities justified warrantless entry"). Because this case involves a physical altercation that posed a threat to life and safety, in addition to substantial disruption of the peace, this case provides no occasion to address the extent to which emergency entries are warranted solely to quell disturbances of the peace or to protect property, see *Rhiger*, 315 F.3d at 1288; cf. *Michigan* v. *Tyler*, *supra*.

brain to bleed.[27] Officers standing on the outside looking in cannot be expected to gauge the difference.

Third, domestic disturbances cannot be analyzed in isolated, single-blow snapshots. Balanced against the historic protection for the privacy of the home is the longstanding recognition of the "'combustible nature of domestic disputes.'" *Fletcher* v. *Town of Clinton*, 196 F.3d 41, 50 (1st Cir. 1999) (quoting *Tierney* v. *Davidson*, 133 F.3d 189, 197 (2d Cir. 1998)). Domestic violence complaints, which account for 60% of all disturbance calls, *Law Enforcement Officers Killed and Assaulted*, *supra*, at 18-22, represent "one of the most potentially dangerous, volatile arrest situations confronting police," *State* v. *Comer*, 51 P.3d 55, 64-65 (Utah Ct. App.) (citation omitted), cert. denied, 59 P.3d 603 (Utah 2002). "In those disputes, violence may be lurking and explode with little warning." *Fletcher*, 196 F.3d at 50; *State* v. *Greene*, 784 P.2d 257, 259 (Ariz. 1989) (in domestic disturbances, "the possibility for physical harm or damage escalates rapidly"). Accordingly, in responding to disturbance calls in the middle of the night, especially when there is reason to believe that alcohol is involved, police often must "make particularly delicate and difficult judgments quickly." *Fletcher*, 196 F.3d at 50. The

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[27] See Malcolm Prior, *One Punch Is All It Takes To Kill*, BBC News Online, June 9, 2004 <http://news.bbc.co.uk/2/hi/uk_news/england/hampshire/dorset/3790037.stm> (lethality increases when alcohol impairs ordinary defenses); cf. *Death Chains Balk Houdini in Desperate Life Battle*, S.F. Chron., Nov. 1, 1926, at 1 ("Student's Blow to Stomach Brought Fatal Illness").

Fourth Amendment should leave room for latitude and police expertise in making such judgments.[28]

The entry in this case was reasonable because the police witnessed ongoing physical violence in circumstances that indicated a need for third-party intervention. What the police encountered was an ongoing "loud, tumultuous" fight, Pet. App. 4, involving five individuals, one of whom was a juvenile, and in which the police witnessed actual physical assaults by both the adults and the juvenile, *id.* at 19. The fight occurred in a kitchen, where the combatants had ready access to knives and other dangerous items.[29] In addition, officers came upon the fight in the middle of the night, with signs of alcohol consumption and knowledge that the combatants' behavior was so disruptive and prolonged that neighbors had complained to the police. *Id.* at 2-3; J.A. 23, 32, 34-35 (police witness illegal alcohol use outside residence; officer attests, based on 16 years of experience, that "approaching a hundred percent" of all disturbance calls "this time of the morning" are "alcohol or drugs related"). By the time of the assaults, the fight had become so "heat[ed]," Pet. App. 18, "belligerent," Def. Mem. in Support of Mot. to Suppress 2, and loud that

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[28] *Welsh* v. *Wisconsin*, 466 U.S. 740 (1984), is not to the contrary. In that case, the Court held that a warrantless, nighttime entry into a residence to arrest a person for driving under the influence was prohibited by the Fourth Amendment. *Id.* at 754-755. The officers' "only" interest in *Welsh*, *id.* at 750, was in making an arrest for an "extremely minor," "nonjailable traffic offense," *id.* at 742, 753, that involved "little remaining threat to the public safety" once the defendant abandoned his car and entered his home, *id.* at 753.

[29] See J.A. 70 ("[T]he kitchen is a dangerous place. There are access to many hidden weapons in a kitchen. We always operate in a kitchen environment in a heightened state of officer safety and security.").

"nobody heard a word," J.A. 40, when the officer "hollered" into the room to identify himself, Pet. App. 2. Under those circumstances, an entry to halt the violence and to protect those involved from further harm was reasonable.

C. Historic Practice Supports Permitting Warrantless Entries To Stop A Fight

Nothing in the history of the Fourth Amendment or the common law "requires the police (and the neighbors) to idly observe and tolerate a late-night, ongoing nuisance to the community while a warrant is sought and obtained." *Rohrig*, 98 F.3d at 1524. To the contrary, the common law long recognized that, "[w]here there is an affray made in a house, * * * during such affray the constable or any other may break open the doors to preserve the peace, and prevent blood shed." 1 Matthew Hale, *The History of the Pleas of the Crown* 588 (1847).[30]

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[30] See 1 William Hawkins, *A Treatise of Pleas of the Crown* 137 (1782) ("And if an Affray be in a House, the Constable may break open the Door to preserve the Peace"); 2 *id.* at 87; 4 William Blackstone, *Commentaries* *145 (the constable "or other similar officer" "may break open doors to suppress an affray" and "to keep the peace"); Horace L. Wilgus, *Arrest Without A Warrant*, 22 Mich. L. Rev. 541, 681 (1924) (arrest authorized "where an officer heard in the night time a loud noise in a house apparently of quarreling amounting to a breach of the peace"); *id.* at 681 n. 393 (citing cases); *id.* at 802-803, 805 (same); Francois-Xavier Martin, *The Office and Authority of a Justice of the Peace, and of Sheriffs, Coroners, etc. According to the Laws of the State of North Carolina* 38 (1791); James Parker, *The Conductor Generalis* 12 (H. Gaine, pub. 1788); John F. Grimke, *The South Carolina Justice of Peace* 21 (1788); William J. Cuddihy, *The Fourth Amendment. Origins and Original Meaning* 1515 & n. 306 (1990) (unpublished Ph.D. dissertation, Claremont Graduate School) (available at Dep't of Justice Library).

Later common-law decisions are to the same effect. In *Commonwealth* v. *Tobin*, 108 Mass. 426 (1871), for example, Massachusetts' highest court held that, when police officers "heard a loud noise, apparently of quarrelling, and traced it to the defendant's house," where they found four persons, including the defendant who "had his arm raised as if to strike his wife," the officers were justified in entering without a warrant. *Id.* at 426-427. The court explained:

> A constable has the right, by virtue of his office, and without any warrant, to enter any house, the door of which is unfastened, and in which there is a noise amounting to a breach of the peace, and to arrest any person engaged in an affray or in committing an assault in his presence.

Id. at 429.[31]

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[31] See also *Commonwealth* v. *Krubeck*, 8 Pa. D. 521, 522-523 (Pa. Quar. Sess. Ct. 1899) ("[T]he peace officer, by virtue of his office and without a warrant, may enter any house or inclosure, the entrance to which is unfastened, and in which there is a noise amounting to a breach of the peace, and may arrest therein any person whom he finds engaged in an affray or in committing an assault in his presence; and if there be an affray in progress within the inclosure, he may even break open the doors to keep the peace and prevent the danger."); *Ford* v. *Breen*, 53 N.E. 136 (Mass. 1899) (in-home arrest without warrant proper where defendant "was in a state of intoxication, committing a breach of the peace or disturbing others"); *Hawkins* v. *Lutton*, 70 N.W. 483, 484-485 (Wis. 1897) (police officers, without a warrant, may enter house and arrest occupants for disturbing the peace in the presence of the officers); *Dilger* v. *Commonwealth*, 11 S.W. 651 (Ky. 1889) (where police overheard cries for help from woman being beaten, entry and arrest without a warrant was proper); *Hancock* v. *Baker*, 126 Eng. Rep. 1270 (C.P. 1800) (private persons may break into a house to prevent an

D. The Officers' No-Knock Entry Was Proper

Finally, the Utah Supreme Court erred in requiring the officers to knock before effecting an emergency entry. Pet. App. 20. The record is clear that, in all likelihood, knocking would have been futile. *Id.* at 19-20, 39, 47. In fact, the melee was so loud that respondents did not even hear when the officers opened the screen door and "hollered" to identify themselves. In this context, that announcement served the same purpose as a knock on the screen door. If a police officer's shouts cannot rise above the din, there is no sound basis for requiring the emptier gesture of rapping on a screen door. See *Richards* v. *Wisconsin*, 520 U.S. 385, 394 (1997) (pre-entry knock not required when it would be "futile"); *Wayne*, 318 F.2d at 213 (opinion of Burger, J.) ("[T]he law does not require futile, useless things to be done."). In addition, "the presumption in favor of announcement * * * yield[s] under circumstances presenting a threat of physical violence." *Wilson* v. *Arkansas*, 514 U.S. 927, 936 (1995).

In this kind of emergency situation, a requirement that the police not enter unless they knock and are allowed in would be badly out of place and would leave police "in an almost impossible spot." *Atwater*, 532 U.S. at 350. An entry could result in the suppression of evidence or personal liability. At the same time, the neighbors whose peace in their own homes was continuing to be disturbed "would doubtlessly have been surprised —and disappointed—if the officers had done" nothing more than knock ineffectually. *Carlson*, 548 N.W.2d at 143. Had the fight escalated and a more serious or fatal

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attempted murder, where the assault "broke the peace" and neighbors heard the wife's cries for help, which provided "reasonable cause" for the entry); *id.* at 1271-1273.

injury ensued or a history of domestic violence or child abuse later been uncovered, the officers might have been censured or perhaps sued under state law for "knowingly refrain[ing] from interference in such violence" when their knock went unanswered. *Thurman* v. *City of Torrington*, 595 F. Supp. 1521, 1528 (D. Conn. 1984). As the responding officer explained, "[f]or us to walk away, to leave the scene at that time when we could hear people yelling for help inside, saying get off, stop, and hearing the thumping and crashing * * * [would] have been derelict in our duties." J.A. 29.[12]

CONCLUSION

The judgment of the Supreme Court of Utah should be reversed.

Respectfully submitted.

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[12] If, on the other hand, the only constitutional error was the officers' failure to knock before entering, there is a substantial question whether the exclusionary rule applies. See *Hudson* v. *Michigan*, No. 04-1360 (argued Jan. 9, 2006); see also *United States* v. *Leon*, 468 U.S. 897, 919-920 (1984) ("Where the officer's conduct is objectively reasonable, * * * [e]xcluding the evidence can in no way affect his future conduct unless it is to make him less willing to do his duty.") (quotation marks omitted).

(12)

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No. 05-502

In the Supreme Court of the United States

October Term, 2005

BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR

Respondents.

ON WRIT OF CERTIORARI TO THE UTAH SUPREME COURT

BRIEF AMICI CURIAE of AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE and THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF PETITIONER.

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BRIEF OF *AMICI CURIAE*

This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondents. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc., (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record, and Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc. made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world. Founded in 1893, the IACP, with more than 20,000 members in 101 countries, is the world's oldest and largest association of police executives. IACP's mission, throughout the history of the association, has been to identify, address and provide solutions to urgent law enforcement issues.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of protecting citizens from violence, including the important category of domestic violence; and (2) police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters, including the formulation and implementation of training and policies on the subject.

Because of the relationship with our members and the composition of our membership and directors, including active law enforcement administrators and counsel, we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

At 3:00 A.M. a police department received a complaint of a loud party at a residence. Four officers responded and stood on the street curb in front of the house. They could hear a loud commotion from within the house, yelling, shouts of "stop, stop" and "get off me." To any objectively reasonable person it appeared that a fight was in progress, possible domestic violence.

The officers saw a beer bottle on the ledge of the front window. One officer stood guard at the front door and three others walked to the corner of the house and down the driveway to the backyard fence to investigate where the fight was coming from. Looking into the backyard through the fence, they saw two teenage males drinking alcoholic beverages. They continued to hear the loud noise of a fight and approached the back of the house to investigate.

Through a window, the officers could see four adults attempting to restrain a juvenile against a refrigerator. The juvenile's hands were doubled into fists and he was attempting to free himself from the adults. The officers then walked to the open back door. The screen door was shut, but an officer could see the juvenile punch one of the adults in the face, drawing blood. As the fighting continued, an officer opened the screen door and yelled "police," but the noise of the fighting was so great he was not heard. The officers then entered the kitchen and an officer again yelled as loudly as he could. With that the altercation stopped. In order to prevent anyone else from being injured, the officers stepped between the combatants and handcuffed the juvenile. The adult assault victim was offered assistance but the situation turned into a further melee and the adult occupants were then arrested for disorderly conduct, intoxication, and contributing to the delinquency of a minor.

The trial court suppressed the evidence of alcohol consumption found inside the home, finding no exigent circumstances to justify the police entry into the residence. The court said the officers should have knocked on the door, even though it noted the occupants probably would not have heard a knock. This was affirmed 2-1 by the Utah Court of Appeals, *Brigham City v. Stuart, et al.*, 2002 UT App. 317, 57 P.3d 1111 (2004), with a dissenter noting that it was "nonsensical" to require officers, charged with keeping the peace, to witness this degree of violence and take no action until it escalated further. The Utah Supreme Court affirmed, 3-2, *Brigham City v. Stuart, et al.*, 2005 UT 13, 122 P.3d 506 (2005), holding that the officers' entry was not justified under either the "emergency aid" exception recognized in *Mincey v. Arizona*, 437 U.S. 385 (1978), or the "exigent circumstances" exception to the warrant requirement.

The two dissenters in the Utah Supreme Court argued that the majority decision would consign law enforcement to the porch steps until it is too late to prevent the very injury the majority conceded officers are entitled to prevent. They cited the trial court's finding that a knock probably would not have been heard and, relying upon the decision in *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997), concluded that it is not unreasonable for officers to bypass knocking or announcing their presence if such an action would be futile, dangerous, or inhibit an effective investigation of the suspected crime. The dissenters noted that the Fourth Amendment does not require "paralysis" when the police are eyewitnesses to on ongoing assault in situations where immediate intervention is necessary to prevent physical harm.

SUMMARY OF ARGUMENT

Law enforcement officers deal on a daily basis with a wide range of incidents of physical assaults. Much of this daily routine of law enforcement in America involves intervention in

domestic violence. The proper test for such cases should be good faith conduct of the officers based upon facts giving rise to an objectively reasonable belief that exigent circumstances exist to prevent injury in domestic violence and other assaultive conduct scenarios.

This Court has long espoused the standard in Fourth Amendment settings as reasonably objective circumstances justifying police investigative activities. Speaking from our unique experience in the criminal justice system, *amici* submit that the decision of the court immediately below presents an array of confusing rules which provide law enforcement officers with little or no guidance to act in domestic violence and related assaultive combat cases. The case further highlights the conflicting rules and opinions in the state and federal courts which result in law enforcement legal advisors in different states formulating different rules and policies for officers in their jurisdictions. This results in a situation where, for example, a police trainer with a multi-state audience is faced with a multiplicity of different and often conflicting rules on a subject which is governed by federal constitutional law.

***Amici* request the Court to adopt a bright line rule that where law enforcement officers have an objectively reasonable basis to believe there are exigent circumstances supporting an immediate entry into a residence necessary to prevent physical harm to occupants therein, including domestic partners or others, they may do so in accordance with Fourth Amendment jurisprudence and their peace-keeping duties.**

As part of such a rule we submit that when it is apparent that an immediate physical entry into a dwelling is necessary to quell ongoing violence, it is unnecessary to require officers to spend precious time on the doorstep engaged in futile attempts to announce their presence. We join with the dissenting judges

in the courts below that the Fourth Amendment precedents of this Court do not require such "empty gestures."

ARGUMENT

THE FOURTH AMENDMENT DOES NOT PROHIBIT LAW ENFORCEMENT OFFICERS, ACTING IN AN OBJECTIVELY REASONABLE MANNER AND IN GOOD FAITH, WHO PERSONALLY WITNESS AN ONGOING PHYSICAL ALTERCATION IN A RESIDENCE, FROM ENTERING THE RESIDENCE TO PREVENT BODILY HARM; THE AMENDMENT DOES NOT REQUIRE OFFICERS TO WAIT PASSIVELY FOR VIOLENCE TO ESCALATE TO A POINT AT WHICH SEVERE HARM IS LIKELY TO OCCUR.

Amici will not repeat the legal arguments put forward by the petitioner in this case; we do, however, support them.

As national representatives of law enforcement officers, administrators and legal advisors, we wish to inform the Court of the following policy considerations from our professional perspective:

- Nationally, law enforcement agencies have been presented by the courts with an array of at least three different legal theories from which to choose when faced with a factual scenario such as the present case: **The Emergency Aid Doctrine**; **The Exigent Circumstances Doctrine**; and **The Community Caretaking Doctrine**.

- Under the **Emergency Aid Doctrine** (also known as the "**Emergency Aid Exception**"), "[n]umerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." *Mincey v. Arizona*, 437

U.S. 385, 392 (1978). While this was dictum in the Court's opinion, the Court stated that "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" 437 U.S. at 392-93 (quoting *Wayne v. United States*, 318 U.S. 205, 212 (D.C. Cir. 1963)). See, generally, cases collected at Bateman, Annotation, *Lawfulness of Search of Person or Personal Effects under Medical Emergency Exception to Warrant Requirement*, 11 A.L.R. 5th 52, § 2[a] (1993).

From a policy point of view, a problem for police administrators, trainers, and personnel in the field is that *Mincey* did not articulate a standard by which "emergency aid' entries would be judged. Thus, while many state and federal courts have cited *Mincey* as recognizing an "emergency aid exception" to the warrant requirement, the state and federal courts that have adopted this doctrine are inconsistent in their approaches to it and many, often conflicting, nuances that have been accreted to the rules through application.

- Under the **Exigent Circumstances Doctrine**, a warrantless entry into a home is permissible if an objectively reasonable police officer would believe that a person is in need of immediate aid. One recent commentator has described this doctrine thusly:

> Exigent circumstances have been described as "those circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." [*United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.)]. When both probable cause and exigent

> circumstances exist, the exigent circumstances exception justifies warrantless searches. As the probable cause requirement demonstrates, however, exigent circumstances analysis is appropriate only when officers act in a criminal investigatory capacity. [*People v. Ray*, 981 P.2d 928, 936-37 (Cal. 1999)].

Bell, Fourth Amendment Reasonableness: *Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT JOURNAL OF CRIMINAL LAW 1, 4 (Dec. 2005).
http://www.boalt.org/bjcl/v10/v10bell.htm

A recent case also describes the doctrine as,

> In general, exigent circumstances exist when "real immediate and serious consequences" would certainly occur if a police officer were to "postpone [ ] action to get a warrant." *Welsh v. Wisconsin*, 466 U.S. 740, 751, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984) (internal quotation omitted). "The exigent circumstances exception relies on the premise that the existence of an emergency situation, demanding urgent police action, may excuse the failure to procure a search warrant." *United States v. Radka*, 904 F.2d 357, 361 (6th Cir. 1990). We have identified the emergency situations giving rise to the exigent circumstances exception to the warrant requirement as . . . [*inter alia*] a risk of danger to the police or others. *United States v. Williams*, 354 F.3d 497, 503 (6th Cir. 2003) (citing *United States v. Johnson*, 22 F.3d 674, 680 (6th Cir. 1994)). . . .

United States v. McClain, 430 F.3d 299, 304 (6th Cir. 2005).

Some courts examining emergency entries under the exigent circumstances doctrine apply the *objective standard* traditionally used in Fourth Amendment cases. As pointed

out in *United States v. Thomas*, 430 F.3d 274, 280 (6th Cir. 2005), a recent case applying the "knock and announce" rule,

> [B]y now it is well established that the state of mind of arresting police officers does not establish whether a seizure in general or a constructive entry in particular has occurred. *See Mendenhall*, 446 U.S. at 554 n. 6, 100 S.Ct. 1870 ("[T]he subjective intention of [law enforcement] to detain . . . is irrelevant except insofar as that may have been conveyed to the respondent."); *United States v. Waldon*, 206 F.3d 597, 603 (6th Cir. 2000) ("Whether an encounter between a police officer and a citizen is consensual depends on the officer's objective behavior, not on any subjective suspicion of criminal activity."); *see generally Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) ("Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.").

Other courts apply the doctrine with the focus on an officer's *subjective motivation* for making an entry. This line of cases holds that even if an intrusion is objectively reasonable, the doctrine does not apply if the officer was not subjectively motivated by the need to render aid. See, e.g., *United States v. Cervantes*, 219 F.3d 882, 890 (9th Cir. 2000); *United States v. Borchardt*, 809 F.2d 1115, 1117 (5th Cir. 1987).

The problem for police administrators, trainers and personnel with this line of cases and interpretation is that ". . . outside the context of inventory search or administrative inspection . . . , [the United States Supreme Court has never held] that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment." *Whren v. United States*, 517 U.S. 806, 812 (1996). Also questioning the subjective

motivation line of interpretation, see 3 Wayne R. LaFave, Search and Seizure § 6.6(a) n. 17, p. 454 (4th ed. 2004).

- Under the **Community Caretaking Doctrine**, yet another legal basis for possible resolution of the Fourth Amendment issues involving factual scenarios similar to the instant case exists:

> More recently, courts have begun to recognize the community caretaking exception to the warrant requirement, which is distinct from the exigent circumstances exception. In the 1999 case [of] *People v. Ray*, [981 P.2d 928, 934 (Cal. 1999)] the California Supreme Court recognized the duties of peace officers to perform community caretaking functions unrelated to crimefighting: "[O]ur contemporary society . . . is an impersonal one. Many of us do not know the names of our next-door neighbors. Because of this, tasks that neighbors, friends or relatives may have performed in the past now fall to the police." The court acknowledged that one legitimate role of police officers is to respond to requests of people who seek police assistance because they are concerned about the safety or welfare of their friends, loved ones, and others and that "circumstances short of a perceived emergency may justify a warrantless entry." [981 P.2d at 934]. Approving a police entry made with intent to safeguard property and to search for citizens in distress, the *Ray* court concluded that "[w]hen officers act in their properly circumscribed caretaking capacity, we will not penalize the People by suppressing evidence of crime they discover in the process." [981 P.2d at 939] . . . [T]he United States Supreme Court has acknowledged legitimate community caretaking functions in the context of vehicle seizures and searches, but the Court has yet to decide directly whether the community

caretaking exception extends to warrantless searches of homes. [*Cady v. Dombrowski*, 413 U.S. 433 (1973)]. . . .

Courts consider the level of intrusion itself when determining whether police action was reasonable. This basic reasonableness standard governs warrantless entries made for community caretaking purposes, including intent to render emergency aid. Probable cause and exigent circumstances analysis is not implicated when officers are not motivated by crime-solving intentions. Thus, officer intent at the time of entry is a significant consideration when determining whether the community caretaking exception applies, and courts require officers to act in good faith, meaning that the officer's entry cannot be a pretext for the investigation of criminal activity. Moreover, the officer's actions must be objectively reasonable, meaning that he must have a reasonable belief, based on articulable facts, that a person is in need of immediate assistance or protection from harm.

The good faith requirement also limits the scope of searches made pursuant to the community caretaking exception: "[E]ntry must be limited to the justification therefor, and the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance." [*People v. Davis*, 497 N.W.2d 910, 921 (Mich. 1993)]. The warrantless entry and subsequent search "must be suitably circumscribed to serve the exigency which prompted it." Nevertheless, "once the veil of the home has been legally pierced, [there is] no need for police officers to turn a blind eye to crime [plain view doctrine], so long as the arrest is otherwise

effected in compliance with the constitutional requirement of probable cause (and any other relevant state law criteria." [*Sheik-Abdi v. McClellan*, 37 F.3d 1240, 1245 (7th Cir. 1994)].

Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT JOURNAL OF CRIMINAL LAW 1, 4-8 (Dec. 2005).
http://www.boalt.org/bjcl/v10/v10bell.htm

- Compounding the problem for law enforcement administrators, trainers and personnel is the fact that these three legal doctrines developed by the courts are closely related, share some common elements—but diverge on other elements—and state and federal courts have not always clearly distinguished between them. Even the labelling process varies among the courts, making it difficult for law enforcement officers to know which one of the doctrines applies in their jurisdiction and what the elements are.

- Based on these considerations *amici* submit that this case is an opportunity for the Court to clarify the law on the subject and adopt a bright-line rule for law enforcement to apply. We believe that in light of the Court's Fourth Amendment precedents—with *Whren v. United States*, 517 U.S. 806 (1996) as the cornerstone—objective reasonableness should be the basis for judging law enforcement conduct in these cases without regard to the subjective beliefs of a particular law enforcement officer (with the exception of inventory and administrative searches), and that the following rule or some variation thereof should be applied:
    - **Where a law enforcement officer has an objectively reasonable basis to believe that exigent circumstances exist that injury will occur unless the officer makes a warrantless entry upon private property and/or a**

dwelling to prevent the same, the officer, acting in good faith,[2] may take appropriate action to prevent injury. *Amici* believe, based on our experience, that such a rule should apply to any level of injury, since altercations— including domestic violence (which includes familial parties and cohabitants)—can readily escalate into felonious conduct if an officer hesitates to take preventive action. Indeed, police officers have a civil law duty to protect in such cases. When so acting, an officer would have a constitutionally protected status and evidence of any crime would be plain view evidence under the rule of *Horton v. California*, 496 U.S. 128 (1990) and subject to seizure.

- However this Court chooses to formulate the rule for assessing actions similar to those engaged in by the officers in this case, *amici* submit that the officers acted in an objectively reasonable manner and were entirely warranted under the Fourth Amendment in making the entry as they did to prevent injury to the juvenile and others. Indeed, if

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[2] *United States v. Leon*, 468 U.S. 897 (1984). In the context of the Community Caretaking Doctrine one commentator has argued:

> The better result would be to recognize that good faith warrantless searches, when appropriately limited in scope and conducted in order to provide protection or assistance to citizens in distress, do not offend Fourth Amendment guarantees. Rather, they are reasonable intrusions occurring in the performance of legitimate police community caretaking functions—functions that our society and our courts have come to expect law enforcement officers to perform.

Bell, *Fourth Amendment Reasonableness: Why Utah Courts Should Embrace the Community Caretaking Exception to the Warrant Requirement*, 10 BOALT JOURNAL OF CRIMINAL LAW 1, 27 (Dec. 2005). http://www.boalt.org/bjcl/v10/v10bell.htm

the officers had not acted as they did, they would have violated their oath of office to protect life and could be potentially subject to disciplinary action by law enforcement administrators as well as civil liability under 42 U.S.C. § 1983 and state tort provisions for failure to protect.

CONCLUSION

Amici urge this Court to uphold the constitutionality of the law enforcement conduct involved in this case on the law and as a matter of sound judicial policy.

Respectfully submitted,

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No. 05-502

In The Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART,
SHAYNE R. TAYLOR and SANDRA TAYLOR,

Respondents.

On Petition For Writ Of Certiorari To The Utah Supreme Court

BRIEF OF WAYNE COUNTY, MICHIGAN, MARICOPA COUNTY, ARIZONA, SCOTT COUNTY, MINNESOTA, AND THE STATES OF ALABAMA, ARIZONA, COLORADO, DELAWARE, HAWAII, KANSAS, MICHIGAN, MISSOURI, MONTANA, NEBRASKA, NEW HAMPSHIRE, NORTH DAKOTA, OHIO, OREGON, VERMONT, AND WASHINGTON AS *AMICI CURIAE* SUPPORTING PETITIONER

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QUESTIONS PRESENTED

From outside a home at 3:00 a.m., officers witnessed a tumultuous struggle between four adults and a juvenile. Upon seeing the juvenile punch one of the adults in the face, the officers entered the home to quell the violence. The questions presented are:

1. Does the "emergency aid exception" to the warrant requirement recognized in *Mincey v. Arizona*, 437 U.S. 385 (1978), turn on an officer's subjective motivation for entering the home?

2. Was the gravity of the "emergency" or "exigency" sufficient to justify, under the Fourth Amendment, the officers' entry into the home to stop the fight?

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STATEMENT OF THE CASE

Amici adopt Petitioner's Statement of the Case. Petition at 2-6.

INTERESTS OF THE *AMICI*

Amici states have a substantial interest in ensuring consistent application of the Fourth Amendment. The issue presented by the petitioner presents a common fact pattern and a vexing issue on which jurisdictions in the country are not consistent. This inconsistency is especially problematic where the state supreme courts and their corresponding federal circuit courts apply different tests. For example, the Eighth Circuit applies an objective test to "emergency" entries, but Nebraska and North Dakota apply a subjective test. These inconsistencies should not be tolerated. The Fourth Amendment should mean the same thing throughout the county, and resolution of the conflicts in decisions, as well as guidance to the police in these circumstances, is essential.

Amici counties also have a substantial interest in ensuring consistent application of the Fourth Amendment. *Amici* counties are responsible for prosecuting and defending criminal appeals in their respective counties. They are also responsible for ensuring that local law enforcement officers understand and adhere to Fourth Amendment precepts. *Amici* believe that the entry of police here to quell the violence occurring before their eyes was entirely reasonable under the Fourth Amendment. The Fourth Amendment should not prevent officers from taking

reasonable action in protecting the public from harm. This Court should so say.

REASONS THE WRIT SHOULD BE GRANTED

Involved here are two exceptions to the warrant requirement. Both justify the entry of the police in this case, and the decisions by the lower courts to the contrary are mistaken. Because decisions from a number of jurisdictions are in conflict as to the Fourth Amendment principles involved in the common situation presented here, plenary review is appropriate and needed.

A. Introduction: The Factual Pattern Involved.

Put simply, police answering a disturbance call saw a physical altercation occurring right before their eyes. They made this observation from outside the premises – and there is no question that they were properly in a position to make it – and the altercation was occurring just inside the premises. Several individuals appeared to be attempting to restrain another, and that individual broke free and landed a punch to the face of one of those seeking to restrain him. At that point, the officers had no way of knowing whether the individual who landed the punch was a criminal – perhaps even an intruder – who the others were attempting to restrain, or himself a victim of intruders. Or the altercation may have been a mutual affray. This incident is scarcely isolated; police responding to disturbance calls regularly confront incidents of violence ongoing in the premises, and must make a quick decision whether to enter to quell the disturbance before it escalates and risks serious injury to those involved or the

officers themselves, or, because the law so commands, do nothing if serious or aggravated injury has not yet occurred or is not being threatened at that very moment.

The decision in this case commands the police to, in effect, take the most passive approach possible under the circumstances, attempting to signal their presence in some way while remaining outside (even if it is unlikely they will be noticed given the nature of the ongoing event). Rather than entering immediately to avoid escalation of the events and serious harm, they are to hold their ground outside the premises unless and until serious bodily injury occurs (or, perhaps, is threatened by the use of a deadly weapon). The requirement of the Fourth Amendment that all searches and seizures be "reasonable" does not compel this result, and this Court ought to so say.

The entry of the police here was justified both by the doctrine of "emergency circumstances," as part of the community-caretaking function of the police, and also exigent circumstances, as part of the law-enforcement responsibilities of the police. (It is quite possible for objective facts to justify entry *both* to protect occupants of the premises against injury and to pursue law-enforcement objectives.)

B. Where from outside premises police observe acts of physical violence occurring inside the premises, immediate entry by the police is justified by the doctrine of emergency circumstances, as part of the community-caretaking function of the police.

As well set forth by the petitioner, there is substantial disagreement among jurisdictions regarding the "elements"

of the emergency aid doctrine. That the exception exists has been affirmed by this Court:

> We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. . . . "The need to protect or preserve life or *avoid serious injury* is justification for what would be otherwise illegal absent an exigency or emergency."[1]

This Court in *Mincey* did not limit emergency entries to situations where it is reasonable to believe that a person inside the premises is in need of immediate aid – that is certainly *one* circumstance justifying immediate entry – but also referred to the *avoidance* of injury. An entry without warrant is constitutionally reasonable as part of the community-caretaking function of the police where it is reasonable to believe, based on the objective facts, that a person inside is either in need of immediate aid or entry is necessary to *prevent or avoid* serious injury.

As the petitioner points out, jurisdictions are divided as to whether the question is approached by assessing the objective facts or whether the subjective motivations of the entering officers also play a determinative role.[2] The Utah

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[1] *Mincey v. Arizona*, 437 U.S. 385, 392-93 (1978) (internal footnotes and citations omitted; emphasis supplied). *See* also *United States v. Barone*, 330 F.2d 543 (2nd Cir. 1964); *State v. Boggess*, 340 N.W.2d 516, 522 (Wis. 1983) (noting the need of the police to make a "prompt assessment of sometimes ambiguous information concerning potentially serious consequences").

[2] *See* cases cited at pages 9-10 of the Petition.

Supreme Court came down on the side of the division that requires that the subjective motivation for the entry may not be "primarily" to make an arrest or find evidence, and found – though *amici* find the conclusion rather remarkable – that because no medical aid was rendered by the officers who entered, the "subjective motivations test" was not met. Implicitly, the court endorsed the notion that an entry to *prevent or avoid* serious injury does not fall within the emergency circumstances exception, which is inconsistent with this Court's observation in *Mincey*. But this Court has repeatedly cautioned against subjective motivations as a test for the reasonableness of police conduct. Not only was that test rejected in *Whren v. United States*,[3] but that rejection was reaffirmed only last term in *Devenpeck v. Alford*.[4] The Ninth Circuit held that an arrest is not valid under the Fourth Amendment when the criminal offense for which there is probable cause to arrest under the facts known to the officers is not "closely related" to the offense *stated* by the arresting officer at the time of arrest. This Court unanimously rejected this subjective test precisely because such a rule made "the lawfulness of an arrest turn upon the motivation of the arresting officer. . . . This means that the constitutionality of an arrest under a given set of known facts will vary from place to place and from time to time, depending on whether the arresting officer states the reason for the detention and, if so, whether he correctly identifies a general class of offense for which probable cause exists. An arrest made by a knowledgeable, veteran officer would be valid, whereas an arrest made by a rookie *in*

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[3] 517 U.S. 806 (1996).

[4] ___ U.S. ___, 125 S.Ct. 588, 160 L. Ed. 2d 537 (2004).

precisely the same circumstances would not. We see no reason to ascribe to the Fourth Amendment such arbitrarily variable protection."

The same is true here. This Court needs to make plain that the validity of an emergency circumstances entry turns on whether, under the objective facts, it is reasonable to conclude that a person inside is in need of immediate aid or that entry is required to *prevent* serious injury from occurring. And that when an immediate entry may prevent serious injury from occurring, that medical attention has not yet become necessary scarcely impugns even the subjective motivations of the entering officers.

Petitioner also details the split of opinion in various jurisdictions regarding the gravity of the emergency required before the emergency aid doctrine may be applied. The Utah Supreme Court found it inapplicable because serious bodily injury had not yet occurred. But the *avoidance* of great bodily harm is a permissible purpose of immediate entry, and officers must make an immediate, on-the-spot assessment that should not lightly be second-guessed.[5] That delay when faced with an altercation of the sort involved here might result in occurrence of a serious injury, which could have been avoided by immediate action, renders the action of the police in entering entirely reasonable. It is *un*reasonable to require that the police wait to enter until serious bodily injury has occurred or a deadly weapon is employed.

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[5] "Where . . . the police are called upon to respond to a crime reported to be in progress, . . . the police judgments [concerning entry of the premises] should be afforded an extra degree of deference." *Reardon v. Wroan*, 811 F.2d 1025, 1029 (7th Cir. 1987).

C. Where from outside premises police observe acts of physical violence occurring inside the premises, immediate entry by the police is justified by the doctrine of exigent circumstances, as part of the law-enforcement function of the police.

The level of information necessary for the police to enter premises under the emergency aid doctrine is akin to reasonable suspicion.[6] But where entry is justified by exigent circumstances in the exercise of the law-enforcement function of the police, probable cause that a crime has been committed is required.[7] Some courts,[8] including the Utah Supreme Court here, take the view that exigent circumstances cannot justify entry to preserve evidence of a "minor" offense or to arrest for a minor offense; these courts often cite *Welsh v. Wisconsin*.[9] But *Welsh* does not require the result here or in other cases cited in the petition.

Welsh did not involve entry where there was probable cause to believe a crime was occurring before the very eyes of the police officers on the scene, but rather an entry to preserve evidence – blood-alcohol content – that would dissipate with time and thus be unavailable if delay occurred. An exigent circumstances entry requires probable cause that a crime was committed and reason to believe that evidence will be destroyed or lost if entry is delayed to obtain a warrant, *where preservation of evidence is the purpose of the entry*. In *Welsh*, this Court held

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[6] *See, e.g., People v. Davis*, 442 Mich. 1, 20, 497 N.W.2d 910 (1993).

[7] *See, e.g., United States v. Baskin*, 424 F.3d 1, 2 (1st Cir. 2005).

[8] *See* Petition at 11-14.

[9] 466 U.S. 740 (1984).

that where the offense is a minor one (and it must be borne in mind that the statute there provided that a first offense was a noncriminal violation subject to a civil forfeiture proceeding for a maximum fine of $200), the "preservation of evidence" component of exigent circumstances will not justify a warrantless entry.

But preservation of evidence is not the only justification for an exigent circumstances entry – that entry may also be justified, as with emergency circumstances, to prevent injury to a person or persons (generally involved with an ongoing crime) or even injury to property (also generally involved with an ongoing crime). Unlike evidence gathering, where the purpose of an entry based on probable cause to believe that a crime has been committed is to prevent injury or damage to property, the entry is justifiable without regard to the seriousness of the offense. As one court – which hardly stands alone – has said, "[i]t would have been wholly unreasonable [for the police] to stand idle, watching further damage being done to cars which were almost certainly stolen, while a warrant was obtained. As police officers, they had a duty to preserve and protect the property of the owners, and . . . exigent circumstances justified their entry into the garage."[10]

Amici submit that where probable cause exists – and it existed here – that which drives the permissibility of the entry may be the seriousness (or lack of seriousness) of the offense *only* when preservation of evidence is the justification. But seriousness of the offense is not relevant when the justification – as with emergency circumstances – is to

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[10] *United States v. Conner*, 478 F.2d 1320, 1324 (7th Cir. 1973). *See also* Petition at 12 n.3.

prevent or avoid injury (or further injury) to either property or persons. That an assaultive offense is occurring before the eyes of the officers should, *by definition*, permit the entry of the officers into the premises on this basis under exigent circumstances, as well as under the emergency aid doctrine.

D. Summary.

Police who arrive at premises in response to disturbance calls and, from without the premises, see or hear evidence of violence occurring within the premises, must make an immediate judgment as to how to respond. A judgment to enter should be afforded particular deference. The community-caretaking function of the police permits the police to enter if it is reasonable to believe that someone inside is in need of immediate aid, or that entry will avoid either injury or further injury. For this entry to be reasonable under the Fourth Amendment the question is what the objective facts reveal, not the arguable subjective motivations of the officers. Moreover, the fact that serious injury has not yet occurred does not render an entry unreasonable when an assault is ongoing at the time of the officers' arrival, when prompt action may *prevent* escalation of the situation and serious injury.

The exigent circumstances exception concerns a warrantless entry into premises when the police are exercising their law-enforcement function. There must be probable cause to believe a crime has occurred or is occurring, and it must be reasonable to believe that delaying entry until a warrant is obtained will result in the loss of evidence or injury to persons. Where the concern is preservation of evidence, an entry is not reasonable where the

offense is a very minor one (perhaps simply a civil infraction). But the seriousness of the offense should not be of concern when the purpose of the entry is to avoid or prevent injury to persons or property.

Because courts across the country are in disarray on these questions, *amici* submit that plenary review is needed here.

CONCLUSION

For the foregoing reasons, *amici* ask that the petition for certiorari be granted.

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No. 05-502

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BRIGHAM CITY,

Petitioner,

vs.

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SHAYNE R. TAYLOR, and SANDRA TAYLOR,

Respondents.

On Writ Of Certiorari
To The Utah Supreme Court

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Certiorari Granted: Jan. 6, 2006

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FIRST JUDICIAL DISTRICT COURT
BOX ELDER COUNTY, STATE OF UTAH

Case No. 001100454

BRIGHAM CITY, PLAINTIFF

vs.

STUART, CHARLES W., DEFENDANT

DOCKET ENTRIES

DATE	RECORD NUMBER	PROCEEDINGS
07/26/2000	1	Filed: Citation [for Contributing to Delinquency of a Minor, Furnishing Alcohol to Minors, Disturbing the Peace, and Intoxication (issued 07/23/2000)]
07/27/2000	–	Case filed
07/27/2000	2-3	Filed: Arrest Summary Report
	* * *	
07/28/2000	5	Appearance of Counsel [Rod Gilmore]
	* * *	
08/16/2000	9-10	Filed: Information [charging Contributing to Delinquency of Minor (class B), Contributing to Delinquency of Minor (class B), Disorderly Conduct (class C), and Intoxication (class C)]
	* * *	

09/26/2000	14	Filed: Waiver of Personal Appearance, Entry of Not Guilty Plea, [Request for Continuance] and Demand for Jury Trial
	* * *	
11/02/2000	23-24	MINUTES for pretrial conference before Judge Judkins: Mr. Gilmore informs court that he will be filing motion to suppress and requests a motion hearing; MOTION HEARING/STATUS CONF scheduled for 3/22/01 at 1:30 PM.
12/15/2000	25-26	Filed: Motion to Suppress Evidence and Request for Hearing
12/15/2000	28-35	Filed: Memorandum in Support of Motion to Suppress
12/29/2000	36-39	Filed: Plaintiff's Response to Motion to Suppress
01/23/2001	42-43	Filed: Request to Submit
02/02/2001	44	Filed: Objection to Notice to Submit for Decision
	* * *	
03/13/2001	53-61	Filed: Supplemental Memorandum in Support of Motion to Suppress

03/22/2001	62-65	MINUTES for Motion to Suppress Hearing before Judge Judkins: Defendant is not present because he is on active duty with the army; Counsel meet with judge in chambers. Opening statements by Mr. Gilmore. Officer Jeff Johnson, BCPD, is called, sworn and testifies. Plaintiff's exhibits #1 and #2 are offered and received. Cross examination. Defendant's exhibits #1 through #9 are offered and received. Re-direct. Re-cross examination. Re-direct. Re-cross examination. City rests. Defense rests. Closing arguments by Mr. Gilmore. Closing arguments by Mr. Merrell. Response by Mr. Gilmore. The court makes its findings and grants the motion to suppress. Anything seized after the entrance into the home may not be used as evidence in this trial
05/02/2001	76-79	Filed: Proposed Order on Motion to Suppress (refused)
05/08/2001	66-73	Filed: Objection to Defendant's Proposed "Order on Motion to Suppress Evidence" and Motion to Enter Plaintiff's Alternative Proposed Order.
05/11/2001	74-75	Filed: Notice to Submit Plaintiff's Motion to Enter Plaintiff's Alternative Proposed Order
05/18/2001	80-82	Filed: Order on Motion to Suppress Evidence (signed by Judge Judkins on 5/18/2001)

05/23/2001	83-86	Filed: Objection to Plaintiff's Objection to Defendant's Order and Objection to Plaintiff's Corrected Order
06/11/2001	87-88	Filed: Notice of Filing of Petition for Permission to Appeal Interlocutory Order
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09/13/2001	98	Filed: Reporter's Notice of Filing of Transcript
	* * *	

FIRST JUDICIAL DISTRICT COURT
BOX ELDER COUNTY, STATE OF UTAH

Case No. 001100460

BRIGHAM CITY, PLAINTIFF

vs.

SHAYNE R. TAYLOR, DEFENDANT

DOCKET ENTRIES[1]

DATE	PROCEEDINGS
07/27/2000	Judge JUDKINS assigned
07/27/2000	Case filed
07/27/2000	Filed: Arrest Summary Report
	* * *
07/28/2000	Filed: Appearance of Counsel [Rod Gilmore]
	* * *
08/16/2000	Filed: Information [charging Contributing to Delinquency of Minor (class B), Furnishing Alochol to Minors (class B), Disorderly Conduct (class C), and Intoxication (class C)] *(part of record, but no docket entry)*
	* * *

[1] The trial court did not paginate this record.

09/26/2000 Filed: Waiver of Personal Appearance, Entry of Not Guilty Plea, [Request for Continuance] and Demand for Jury Trial

* * *

11/03/2000 MINUTES for pretrial conference before Judge Judkins: Mr. Gilmore informs the court that he will be filing a motion to suppress and requests a motion hearing date; MOTION HEARING/STATUS CONF scheduled for 3/22/2001 at 1:30 PM

12/29/2000 Filed: Plaintiff's Response to Motion to Suppress

03/22/2001 MINUTES for Motion to Suppress Hearing: Counsel meet with Judge in chambers. Opening statements by Mr. Gilmore. Officer Jeff Johnson, BCPD, is called, sworn and testifies. Plaintiff's exhibit #1 and #2 are offered and received. Cross examination. Defendant's exhibits #1 through 9 are offered and received. Re-cross examination. Re-direct. Re-cross examination. City rests. Defense rests. Closing arguments by Mr. Gilmore. Closing arguments by Mr. Merrell. Response by Mr. Gillmore. The court makes its findings and grants the motion to suppress. Anything seized after the entrance into the home may not be used as evidence in this trial.

05/08/2001 Filed: Objection to Defendant's Proposed "Order on Motion to Suppress Evidence" and Motion to Enter Plaintiff's Alt. Proposed Order

05/18/2001 Filed: Order granting Motion to Suppress evidence signed by Judge Judkins 5/18/01

05/23/2001	Filed: Objection to Plaintiff's Objection to Defendant's Order and Objection to Plaintiff's Corrected Order
06/11/2001	Filed: Notice of Filing of Petition for Permission to Appeal Interlocutory Order

* * *

FIRST JUDICIAL DISTRICT COURT
BOX ELDER COUNTY, STATE OF UTAH

Case No. 001100456

BRIGHAM CITY, PLAINTIFF

vs.

SANDRA A. TAYLOR, DEFENDANT

DOCKET ENTRIES[2]

DATE	PROCEEDINGS
	* * *
07/27/2000	Filed: Arrest Summary Report
07/27/2000	Case filed
	* * *
07/28/2000	Filed: Appearance of Counsel [Rod Gilmore]
	* * *
08/15/2000	Judge JUDKINS assigned
08/16/2000	Filed: Information [charging Contributing to Delinquency of Minor (class B), Contributing to Delinquency of Minor (class B), Disorderly Conduct (class C), and Intoxication (class C)]
	* * *
09/26/2000	Filed: Waiver of Personal Appearance, Entry of Not Guilty Plea, [Request for Continuance], and Demand for Jury Trial
	* * *

[2] The trial court did not paginate this record.

11/02/2000 MINUTES for pretrial conference: Mr. Gilmore informs court that he is going to file a motion to suppress and requests a motion hearing date. MOTION HEARING/STATUS CONF scheduled for 03/22/2001 at 1:30 PM.

12/29/2000 Filed: Plaintiff's Response to Motion to Suppress

03/22/2001 MINUTES for motion to suppress hearing: Counsel meet with Judge in chambers. Opening statements by Mr. Gilmore. Officer Jeff Johnson, BCPD, is called, sworn and testifies. Plaintiff's exhibit #1 is offered and received. Plaintiff's exhibit #2 is offered and received. Cross examination. Defendant's exhibits #1 through 9 are offered and received. Re-direct. Re-cross examination. Re-direct. Re-cross examination. City rests. Defense rests. Closing arguments by Mr. Gilmore. Closing arguments by Mr. Merrell. Response by Mr. Gillmore. The court makes its findings and grants the motion to suppress. Anything seized after entrance into home may not be used as evidence in trial.

03/23/2001 Note: Motion to Suppress hearing minutes modified

* * *

05/08/2001 Filed: Objection to Def's Proposed "Order on Motion to Suppress Evidence" and Motion to Enter Plaintiff's Alternative Proposed Order

05/18/2001 Filed: Order granting Motion to Suppress Evidence (signed by Judge Judkins 5/18/01)

05/23/2001 Filed: Objection to Plaintiff's Objection to Defendant's Order and Objection to Plaintiff's Corrected Order

06/11/2001 Filed: Notice of Filing of Petition for Permission to Appeal Interlocutory Order

* * *

09/13/2001 Filed: Transcript of Motion to Suppress Hearing

* * *

UTAH COURT OF APPEALS

Case No. 20010479-CA

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
	*	* *
06/11/2001	2	PETITION for Interlocutory Appeal
	*	* *
07/12/2001	4	PETITION for Interlocutory appeal granted
	*	* *
09/13/2001	9	NOTICE of transcript filed with trial court
	*	* *
10/03/2001	15	RECORD INDEX filed
10/03/2001	16	RECORD filed
	*	* *
11/30/2001	19	BRIEF OF APPELLANT filed
	*	* *
02/15/2002	22	Brief of Appellee lodged
02/25/2002	23	BRIEF OF APPELLEE filed
	*	* *
04/12/2002	25	REPLY BRIEF OF APPELLANT filed
04/19/2002	26	CALENDARED – set for oral argument

07/02/2002	27	SUBMITTED on oral argument
07/11/2002	28	Exhibit filed
10/03/2002	29	OPINION filed
10/25/2002	30	APPEARANCE OF COUNSEL, AAG Jeffrey S. Gray for Brigham City

* * *

12/05/2002	32	NOTICE – Petition for Writ of Cert filed
03/08/2003	33	Record sent to Supreme Court
04/03/2003	34	NOTICE – cert granted
04/16/2003	35	REMITTITUR/TRANSFER

UTAH SUPREME COURT

Case No. 20021004-SC

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
11/01/2002	1	ORDER granting motion for 30-day extension to file Petition for Writ of Certiorari
11/01/2002	2	MOTION for 30-day extension of time for filing petition for writ of certiorari
12/04/2002	3	WRIT OF CERTIORARI FILED
12/05/2002	4	Receipt for payment
01/02/2003	5	MOTION to extend time for filing opposition to petition for certiorari
01/03/2003	6	ORDER granting respondents' motion for extension of time; respondents are ordered to file their brief on or before 2/5/03
02/06/2003	7	RESPONSE to writ; original and 4 copies filed. Additional 5 copies filed.
02/18/2003	8	CIRCULATED
02/19/2003	9	BRIEF ON DISC FILED
03/26/2003	10	ORDER granting petition for writ of certiorari filed.
03/28/2003	11	RECORD – CERTIORARI called for; emailed Court of Appeals to send record

03/28/2003	12	RECORD FILED: 3 volumes of pleadings, 1 transcript 3/22/01, 1 envelope. [Located 4C]
03/31/2003	13	SET briefing schedule: Appellant's brief due on or before 5/13/03

* * *

05/13/2003	16	REQUEST for stipulated 30-day extension of time until 6/12/03 to file brief of appellant
06/09/2003	17	MOTION to extend time for filing appellant's brief to 7/14/03
06/12/2003	18	ORDER granting extension of time; appellant's brief to be filed on or before 7/14/03.
06/16/2003	19	ORDER granting extension returned – undeliverable; resent 6/16/03
07/14/2003	20	APPELLANT'S BRIEF FILED
08/18/2003	21	MOTION to extend time for filing appellees' brief to 9/17/03
08/22/2003	22	ORDER granting stipulated motion for an extension of time to file brief to 9/17/03
09/16/2003	23	MOTION to extend time for filing appellees' brief to 10/17/03
09/25/2003	24	ORDER granting extension; appellees' brief to be filed on or before 10/17/03.
10/17/2003	25	APPELLEES' BRIEF FILED
11/19/2003	26	REQUEST for stipulated 30-day extension to file appellant's reply brief to 12/19/03.

12/19/2003	27	APPELLANT'S REPLY BRIEF FILED
03/25/2004	28	CALENDARED: Oral argument set for 9:30 6/09/04 before CMD, MBD, MJW, JNP, REN
06/09/2004	29	SUBMITTED on oral argument
12/21/2004	30	SUPPLEMENTAL AUTHORITY to appellant's brief
02/18/2005	31	OPINION filed. Affirmed; Opinion by J. Nerhring; CH Durham and J. Parrish concur; J. Durrant concurs and dissents with opinion; ACF Wilkins concurs with J. Durrant's opinion. [2002 UT 13]
03/02/2005	32	MOTION for 14-day extension of time to 3/18/05 for Brigham City to file petition for rehearing.
03/09/2005	33	ORDER granting extension of time for Brigham City to file petition for rehearing by 03/18/05.
03/18/2005	34	PETITION FOR REHEARING filed by Brigham City.
03/21/2005	35	CIRCULATED
03/31/2005	36	ERRATA TO BRIEF: Brigham City submits replacement for page 3 of petition for rehearing
05/12/2005	37	LETTER inviting appellees to respond to petition for rehearing

05/27/2005	38	MOTION for 14-day enlargement of time to 6/9/05 to file appellees' response to petition for rehearing; hard copy filed 6/01/05
05/27/2005	39	ORDER granting appellees' motion for extension of time; response to petition for rehearing is due to be filed on or before 6/9/05
06/09/2005	40	MOTION for 7-day enlargement of time to 6/16/05 to file response to petition for rehearing. Hard copy filed 6/10/05.
06/10/2005	41	ORDER granting appellees' stipulated motion for an enlargement of time to file response to petition for rehearing by 6/16/05.
06/16/2005	42	ANSWER TO REHEARING PETITION filed.
07/18/2005	43	ORDER denying petition for rehearing pursuant to Rule 35 of the URAP.
08/04/2005	44	REMITTED: 3 vol. pleadings, 1 transcript, 1 envelope returned to First District Court, Brigham City Dept.
08/09/2005	45	MOTION to recall remittitur filed by appellant. Corrected copy filed 8/11/05.
08/29/2005	46	NOTICE filed by Brigham City for defendants to appear or appoint counsel (their previous counsel has been disbarred); Brigham City will be petitioning US Supreme Court for writ of certiorari.

08/30/2005	47	ORDER granting motion to recall remittitur.
	*	* *
10/05/2005	49	APPEARANCE OF COUNSEL: Michael P. Studebaker files his entry of appearance on behalf of Sandra A. Taylor.
10/24/2005	50	PETITION FOR WRIT OF CERTIORARI filed with US Supreme Court 10/17/05 by Brigham City.
10/26/2005	51	Courtesy copy of US Supreme Court petition for writ of certiorari
11/14/2005	52	RECORD called for. Email sent to district court: Please return record to Utah Supreme Court.
11/23/2005	53	APPEARANCE OF COUNSEL: Michael Studebaker appears as counsel for Charles Stuart and Shayne Taylor.
11/23/2005	54	RECORD called for. Sent email to district court: Please return record to SC; one request was made previously but the record remained in the district court to allow an attorney to review it for a matter in the federal courts.
11/25/2005	55	Courtesy copy of response to petition for writ of certiorari filed on 11/16/05.
12/20/2005	56	RECORD FILED: remittitur recalled per notice of 8/30/05; 3 vols. pleadings, 1 transcript 3/22/01, 1 envelope containing videotape. [located 4-D]

01/23/2006	57	US SUPREME COURT CERT GRANTED on 1/6/06; case no. 05-502

* * *

[1]

IN THE FIRST JUDICIAL DISTRICT COURT
BOX ELDER COUNTY, STATE OF UTAH

Case Nos. 001100454, 001100456 & 001100460

STATE OF UTAH, PLAINTIFF

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR
and SANDRA A. TAYLOR, DEFENDANTS

REPORTER'S TRANSCRIPT

MOTION TO SUPPRESS HEARING

MARCH 22, 2001 – 1:40 P.M.

HONORABLE CLINT S. JUDKINS PRESIDING
FIRST DISTRICT COURT COURTHOUSE
BRIGHAM CITY, UTAH

Reported by: RODNEY M. FELSHAW, CSR, RPR

APPEARANCES

For the Plaintiff:

JAMES E. MERRELL
Brigham City Attorney

For the Defendants:

ROD GILMORE
Attorney at Law

BRIGHAM CITY, UTAH

MARCH 22, 2001, 1:40 P.M.

[2]

THE COURT: Let's get this on the record. This is the case of Brigham City versus Charles W. Stuart, Sandra A. Taylor and Shayne Taylor. Mr. Gilmore, you represent all three defendants, is that correct?

MR. GILMORE: That is correct, Your Honor.

THE COURT: Mr. Merrell, you represent the state?

MR. MERRELL: I do. Are all three defendants here?

MR. GILMORE: Charles Stuart is not here. He's on active duty in the armed services.

THE COURT: Very well. Mr. Merrell, you had a question in chambers as related to standing. The court indicated that quite frankly there are no – as far as procedurally there are actually no facts before the court that have been stipulated to.

MR. MERRELL: At this time the city would stipulate to standing.

THE COURT: Very well. That takes care of that. Then, as it goes to the rest of the motion, Mr. Gilmore, I'll hear you first. Even though this is the state's burden, it is your motion and I'll give you that opportunity.

MR. GILMORE: All right. Do you want me to call witnesses?

THE COURT: No, just an opening statement.

MR. GILMORE: Your Honor, as far as the defendants' position goes, our feeling is that the police

officers had no [3] basis to enter the home. They actually didn't have any basis to go beyond the front corner of the home and down the driveway where the camper was. They didn't have any basis to enter into the back yard and they didn't have any basis to enter into the home subsequent to that.

We believe that there is a reasonable expectation of privacy in all three of those areas and that in order to have a warrantless entry the police need to have, number one, probable cause. Number two, some sort of exigent circumstance that would justify entry. We don't believe that that has ever been shown, that there be some sort of exigent circumstance that required an immediate entry into any of those areas.

We do believe that the law is quite clear in that regard. Absent those things there can be no entry. As a matter of fact, assuming that what the officers could see going on in the back of the house, they had to be able to see it from the back yard and they really didn't belong in the back yard in the very first place.

THE COURT: Thank you. Mr. Merrell, your opening statement.

MR. MERRELL: I'm not going to make one, Your Honor.

THE COURT: Very well. Call your first witness.

MR. MERRELL: Thank you, Your Honor. Brigham City would call Jeff Johnson.

[4]

JEFF JOHNSON,

being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MERRELL:

Q. Good afternoon, Officer Johnson. Will you state your name for the record.

A. Jeff Michael Johnson

MR. GILMORE: Excuse me. Can you move out of the way a little?

MR. MERRELL: Certainly. Sorry about that.

Q.(BY MR. MERRELL) Jeff Michael Johnson?

A. That's correct.

Q. How are you employed, Jeff?

A. As a police officer with Brigham City.

Q. And back on the date in question in this matter, it was the 23rd and 24th. I guess it was in the very early morning hours of July 23rd of last year. Were you also so employed at that time?

A. Yes, sir, I was.

Q. What, if anything, is your position as a Brigham City police officer?

A. At that time I was a corporal in the patrol division.

Q. And are you still a corporal in the patrol division?

A. I'm actually a corporal in the investigations division at [5] this point.

Q. All right. Officer Johnson, how long have you been a police officer?

A. At this time, when this happened, 16 years.

Q. All right. And tell me a little bit, or tell the court, about your training in investigating criminal matters?

A. I went through police officer academy and have attended the required 40 hours plus every year of certified training. A lot of that has been in alcohol areas. DUI, how to detect intoxicated persons. How to defuse – in regards to this situation, how to defuse situations. We've been through anger management training, conflict management training. Training in how to handle people who are both intoxicated and emotionally disturbed. You know, I've received nearly 2,000 hours of training on the job regarding issues such as this and how to handle them.

Q. Okay. Officer Johnson, you said that you had some training on the job. With respect to your experience on the job, have you had – you say you've had 16 years experience. Has that been all in the patrol division?

A. Yes.

Q. And during that time – except for your recent entry into the investigative division?

A. That's correct.

Q. During the 16 years have you investigated domestic issues [6] involving alcohol?

A. So many that I couldn't begin to count. Hundreds and hundreds. Probably thousands.

Q. All right. Have you investigated domestic issues involving alcohol that occur in the early morning hours?

A. Yes, frequently.

Q. Have you investigated issues involving altercations between people residing in the same residence?

A. Frequently.

Q. All right. Officer Johnson, on this day, on the 23rd of July of last year, you were dispatched to a residence in Brigham City, is that correct?

A. That's correct.

Q. All right. Why, if you remember, were you dispatched there?

A. We received a complaint of a loud party or altercation occurring from neighbors, other residents, that we responded to.

Q. Were you certain as to which residence it was you needed to respond to?

A. Yes. The residence was identified by the caller.

Q. And do you remember where that was?

A. 1074 Orchard Drive in Brigham City.

Q. All right. And were other officers on duty at that time, as you remember?

[7]

A. Yes, there were. There were three other officers working that night.

Q. Do you remember who they were?

A. Sergeant Ken Broadhead was the shift supervisor on duty. Officer Mike DeRyke and Officer Trent Gunn were the DUI cars out on the DUI shift.

Q. By DUI cars, they were working under the federal DUI grant program and doing DUI enforcement late at night?

A. That is correct.

Q. Are they also available to respond when needed?

A. Yes. They always assist on backup calls. Calls that need backup of this nature that could be a problem.

Q. Was there a reason on this call that you believed there was backup needed or was the dispatch out to all of the different officers on duty at that time?

A. Based on my experience and our collective experience, whenever you respond to a possible party in progress call you have a real problem with people who are under age drinking fleeing the residence. It is good to have a number of officers there in an attempt to secure the scene. Otherwise you have, and I've had this experience, 20, 30 kids running through back yards at three o'clock in the morning, jumping fences and creating a bigger problem than we started with.

Q. Certainly. So, Officer Johnson, were you the first to respond to the residence in your recollection?

[8]

A. Officer DeRyke and I arrived at the same time and parked down the street from the residence.

Q. Were you in different vehicles?

A. Yes, we were. We arrived at the same time. We both parked our vehicles on the corner of Holiday and Orchard. We never drive right up in front of these houses because, obviously, there's an officer safety concern. And, plus, once again if they see us before we get in position we can have a bigger problem than we started with.

Q. All right. Approximately how far from the residence is the corner, the intersection, where you parked?

A. There is one house in between the corner and the house we're talking about at 1074 Orchard.

Q. All right. Did you exit your vehicle at that time?

A. I exited my vehicle and walked over to where Officer DeRyke was exiting his vehicle.

Q. Was he parked in approximately the same area as you were?

A. Yeah. We were parked behind each other.

Q. All right. Upon exiting your vehicle did you observe anything?

A. Immediately I heard loud yelling coming from the east. It was detectable all the way from the intersection.

Q. Was east in the direction towards the residence at 1074 Orchard Drive?

A. That is correct.

[9]

Q. All right. And what, if anything, was in your experience the feeling of this loud yelling?

A. From that point it was pretty muffled. Officer DeRyke and I both stood momentarily trying to determine whether it was a fight or whether it was a party or what kind of noise was being generated at 3 o'clock in the morning that we could here [sic] all the way down at the intersection.

Q. All right. At sometime thereafter did the other officers, Officer Gunn and Officer Broadhead arrive?

A. Yes. Officer DeRyke and I moved away from the intersection prior to that. We went to the northwest corner of the residence where this noise was coming from. We were standing on the curb/gutter area and observing the house, listening to what was going on. We knew Officer Gunn and Sergeant Broadhead were enroute, so we remained there waiting for them.

Q. All right. Approximately how long did you stay there at the residence on the northwest corner prior to the time that they arrived?

A. Momentarily. A minute or two at most. They were right behind us.

Q. During that time were you able to observe anything else as you were standing out on the curb and gutter area there at the residence?

A. Observe, no. We could see lights on in the home. We [10] could hear things, but didn't observe anything.

Q. By observe, I mean with your senses?

A. Okay. Yeah. There was yelling coming from inside the house. We could hear some thumping. It was really unusual. And we also heard people say get off me and – if I can refer back to my notes for the second thing that we heard. There was one other statement that was clearly heard out there. Oh, stop, stop. We heard people yelling stop, stop. Then after that it was get off me.

Q. Was it difficult to determine, or could you determine, where exactly within the house or outside the house these noises were coming from?

A. It was loud, but we couldn't see what part of the house it was coming from. In fact, the front part of the house was relatively dark. You could see lights on towards the rear of the home. The front room was dark. The drapes were pulled open. You could see lights on in the kitchen, which was behind the dining area.

Q. Later on, as you entered the home, you determined that was the kitchen, but I take it you weren't able to tell if that was the kitchen at that time?

A. No. But then it was just lights on behind the front room.

Q. All right. At some point thereafter did Officer Gunn and Sergeant Broadhead then arrive?

[11]

A. Yeah. We all four stood there on the corner conversing momentarily about what we were hearing coming from the house.

Q. What, if anything, was decided about how to proceed at that point?

A. We decided there was a problem inside. Obviously this wasn't something the neighbors were going to tolerate. Secondly, it sounded like there was an altercation occurring, some kind of a fight.

Q. At that point, at that very point, based on your experience and training, did you have a belief that you felt to be reasonable, based on your training and experience, that there was a safety issue involved either for yourself or for the occupants of the home?

A. Definitely. For us to walk away, to leave the scene at that time when we could hear people yelling for help inside, saying get off, stop, and hearing the thumping and crashing, there was no way in the world we could turn away and walk away at that point. We'd been called there by complaining neighbors. And you could tell there was an altercation occurring. You know, I see no way that we couldn't have been derelict in our duties had we left there.

Q. I guess what you could have done, and perhaps the defense would suggest, is you could have simply walked up to the front door, knocked on the door and have the individuals come to the door and respond and have a discussion at to what was **[12]** occurring inside the house, is that correct?

A. Yeah. But that brings up an extreme officer safety issue.

Q. You could have done that?

A. Yeah, we could have done that. I wouldn't do that, though, put myself and other officers in danger.

Q. Is there a reason why?

A. Yes. The officer safety issue I just related to. If somebody is being assaulted inside, that also puts us in danger, in jeopardy. The way I look at this is the way we've been trained. That is that we try to gather as much information as possible and act in the most prudent manner possible to keep everyone, including ourselves, safe.

You know, to walk up to a front door and pound on the door – hypothetically, say this was a rape, the rapist would flee out the back.

Q. Certainly.

A. We needed more information than we had at that point to continue in a safe manner.

Q. Would there, in your training and experience, be any possibility of increased danger to a person in the back of the house were you to knock on the door in the front of the house?

A. In some situations, definitely, no question.

Q. In this situation did you believe that that could have [13] occurred here?

A. It crossed everybody's mind. We all spoke about it and decided to proceed in the manner we did.

Q. All right. Officer Johnson, how did you proceed? Which officers went where, if you remember?

A. I think all four of us went to the front of the home. We stood by the edge of the windows and tried to look inside and see if we could ascertain what was going on. We could see nothing, although we could hear more clearly.

MR. MERRELL: Your Honor, may I approach the witness?

THE COURT: You may.

Q. (BY MR. MERRELL) Officer Johnson, I have a photograph here. Do you recognize that?

A. Yeah. That is the front porch of the home we're speaking of.

Q. Do you remember who took that photograph?

A. Sergeant Broadhead.

MR. MERRELL: Mr. Gilmore, will you stipulate to the introduction of this photo or I can call Sergeant Broadhead?

THE COURT: Wait a minute, counsel. What, now?

MR. MERRELL: Not the introduction, but stipulate – I'm asking if Mr. Gilmore will stipulate to the basis of this photograph being fairly representative of the front of the house. I will speak about the photograph more.

[14]

THE COURT: Mr. Gilmore, are you willing to stipulate to that?

MR. GILMORE: I'll stipulate to that foundation.

THE COURT: Very well.

Q. (BY MR. MERRELL) Officer Johnson, when you arrived at the front of the house was this as the front of the house appeared?

A. Yes.

Q. All right. Anything on the front of the house that appeared to you to possibly indicate the presence of drinking occurring inside the house?

A. We all, and myself, noticed the beer bottle sitting on the front ledge of the front window, which is unusual. People don't usually leave their trash in the front of the house like that.

Q. And in your training and experience, the presence of something like this, did that heighten your concern at all?

A. Yeah. I immediately began to think alcohol. There was probably an alcohol problem here. Which experience based too, this time of the morning, this kind of problem, the high percentage, approaching a hundred percent, is alcohol or drugs related.

MR. MERRELL: Your Honor, if I could move for the introduction and admission of exhibit one.

THE COURT: Any objection to that?

[15]

MR. GILMORE: No objection, Your Honor.

THE COURT: It will be received.

Q. (BY MR. MERRELL) Officer Johnson, we were going to get into exactly what the officers did. Where, to your recollection, did the officers go after that?

A. At that point the supervisor, which was Sergeant Broadhead, indicated to Trent Gunn to stay at the front

door and cover the front door while we proceeded to the rear, which is where all the noise was coming from.

Q. All right.

A. And we being Officer DeRyke, myself and Sergeant Broadhead.

Q. Okay. So yourself, Officer DeRyke and Sergeant Broadhead went to the east of the home?

A. Yes. We went to the front corner on the east edge of the home and stood there peering down the driveway, trying to ascertain where this noise was coming from. It was loud and it was tumultuous. There was a fracas going on somewhere either in the back yard or back of the home.

Q. So as you proceeded to the driveway area, still in line with the front of the house, at that point were you able to continue to investigate and make a determination, make a further determination, as to where the sound was coming from?

A. Yeah. From that point it was obvious to us that it was coming from the rear of the home. It was loud enough that we **[16]** were concerned it might be outside and not in the home. We decided to, you know, investigate where it was coming from. We were trying to locate this fight.

Q. Again, would it have made sense, in your experience and training, at that point, with reasonable suspicion that a fight was occurring in the back yard of the house, to knock on the front door?

A. No.

Q. All right.

A. There would be no sense in that at all.

Q. Officer Johnson, at that point did you proceed with the other two officers down the driveway?

A. Yes, sir, we did.

Q. All right. At some point, as you were walking down the driveway, could you see into the back yard?

A. We took up tactical positions near the back fence and from angles on the back fence you could see a portion of the back yard.

Q. All right. Describe the type of fence that was on the east side and the back yard of the house there, if you could?

A. To my recollection it was a wooden fence with slats nailed on the inside and outside of the center boards, creating a slat type fence, where from angles you can see through and from other angles you can see through.

Q. And as you took up that position on the outside of the [17] fence there were you able to see anything through the fence?

A. Yes, sir.

Q. What if anything did you see?

A. Two juvenile males sitting on a picnic bench in the rear yard of the residence.

Q. In your training and experience approximately how old would you say they were?

A. They were the 14, 16, 17 year age, right in there. High school age.

Q. In your training and experience, once again is there any chance that these individuals back there could have been over 21 years?

A. Absolutely not.

Q. And what, if anything, were they doing back there?

A. They were consuming alcohol out of beer bottles.

Q. They had beer bottles in their hand?

A. Yes.

Q. Actively drinking the beer bottles?

A. Yes. In fact, at one time one of the comments they made while we were standing there was drink up.

Q. You were close enough to hear their conversation at that time?

A. Umm, 12 feet.

Q. All right.

A. Closer than you and I.

[18]

Q. Okay. What, if anything, besides drink up did you hear the two juveniles speaking about?

A. The only other distinctive comment I heard was one of them said he's had too much to drink. They seemed to be referring to the noise we could hear going on.

Q. All right. Let's go back to that. At that time, when you were outside the fence at that time, were you able to continue to hear any sort of noise or altercation – what

appeared in your experience and training to have been an altercation still emanating from the back portion of the home?

A. Definitely. We could still hear it. It was just as severe as when we arrived and was still ongoing.

Q. At that point did you feel as though there was a necessity for either your safety or the other officers' safety or any of the occupants of the home to enter into the back yard at that time?

A. Definitely. There was somebody involved in a fight in that home and we felt like we needed to go in and make sure that somebody wasn't being assaulted, killed, molested, yeah.

Q. In addition to that, did you also, as a result of seeing the juveniles, who appeared in your experience to be juveniles drinking out of alcoholic beverage containers, did that appear to be a plain view violation of the law?

A. Yes, it was.

[19]

Q. All right. So at that time was there an entry made into the back portion of the yard?

A. Yeah. We spoke in a manner – we were more concerned about the ongoing fight than we were the drinking juveniles. Obviously drinking juveniles were not an immediate concern. Obviously there was a violation of the law there, but it wasn't why we were entering into the back yard and it wasn't why we were proceeding in the manner we were proceeding. Our primary concern was still the fight. So at that point we determined that

Sergeant Broadhead would contain the two juveniles momentarily while Officer DeRyke and I continued to pursue wherever this fight was coming from.

Q. All right. And as you entered into the back yard what, if anything, did you see as far as the layout of the land in front of you?

A. Umm, we were on a cemented patio area. There was a picnic table on that. There were some lawn chairs adjacent to that. And there was alcohol containers on top of the picnic table and the two juveniles were sitting there. I went ahead and walked past them. I was the first one into the back yard. I walked right past the juveniles. The only thing I said to them was stay there. I moved to where once again this fracas was occurring.

MR. MERRELL: Your Honor, may I approach?

THE COURT: You may.

[20]

Q. (BY MR. MERRELL) Officer Johnson, Have you seen that before?

A. Yes, sir.

Q. Does that accurately depict what you observed when you entered into the back yard area of the residence at 1074 Orchard Drive?

A. I glanced at this and this is what it appeared to look like to me.

Q. There were the two juveniles sitting there?

A. Yes, the two juveniles were sitting there. Realize that I walked past this with the intent of going to the

fight. This appears to be the same as it was of what I saw, but I was only there momentarily.

MR. MERRELL: All right. Any objection to that?

MR. GILMORE: No.

MR. MERRELL: The City would move to introduce and admit plaintiff's exhibit number two.

THE COURT: It will be received.

Q. (BY MR. MERRELL) Officer Johnson, once you were on that patio area there, I take it the house was to the left of you?

A. Actually, to the right.

Q. To the right?

A. I went through the gate and turned to the right. We were on the back corner of the house. The house extended to the west from us.

[21]

Q. Okay. And what, if anything, were you able to observe on the back of the house there? Were there windows, doors?

A. Windows. There were two windows between me and the door. There could have been three. Two lighted windows. And then there was a door with a dim porch light on over that which would help illuminate the juveniles we saw. And a screen door going into the back of the house.

Q. Was the screen door opened or closed?

A. It was shut.

Q. Was the door that – the solid door on that door also opened or closed?

A. The interior normal house door was open.

Q. Was open?

A. Yes.

Q. All right. As you passed by these windows were you able to see anything in the windows as you passed by, if you remember?

A. Once again I stopped because of the safety concern for us. I looked into one of the windows just from standing. I was about three feet away from it. On an angle through that window I could see a juvenile being restrained by four adults.

Q. All right.

A. And they were – there was obscenities flying and yelling. And the juvenile was trying to break free. The [22] adults were trying to restrain him. The adults were saying things like calm down, settle down to him. His fists were doubled up – his hands were doubled into fists and they had ahold of his wrists trying to restrain him. And they had him pushed up against a white refrigerator that was in.

Q. Were you able to see this through the window or through the door?

A. Through the window. You could see this through the window.

Q. At some point did you proceed to the door?

A. I then walked past the next window, which was a little window over the sink. I believe that's what we determined after I got in there. Then I moved to the doorway and looked through the door.

Q. All right. What could you see through the door?

A. At that point I watched the juvenile get one of his hands free. And there was an adult gentleman in there with a white shirt on. The juvenile swung his fist and landed a punch on the nose and mouth area of the adult male. He then moved to – the adult male then moved to the sink and began spitting blood into the sink.

Q. You could observe blood at that time?

A. Yeah. He actually turned on the water and was cupping water into his hands from the sink, putting it into his mouth and then spitting it back out and it was coming out red.

[23]

Q. At that point did you further determine that there was a danger to the safety of the occupants of the home?

A. There was a fight going on.

Q. Certainly. Did you announce your presence?

A. I opened the door and yelled in police. It was so loud, it was so tumultuous, that nobody heard a word. They were still struggling. They were forcing the juvenile up against the refrigerator so hard that the refrigerator was actually walking.

Q. All right. At that point did you make entry into the home to attempt to secure the situation?

A. I did. I stepped into the home. I still didn't approach them. I again identified myself. Then I yelled, hey, folks, as loud as I could, at which point some of them began to realize I was.

Q. Were you in uniform?

A. Yes, I was.

Q. And did the altercation essentially cease at that time?

A. It dissipated. One by one, as they became aware that I was there, it kind of stopped person by person. It went one, two, three, four, five. They all slowed down, but it didn't stop immediately. They were afraid to release the juvenile. They still held on to him, but he quit fighting when he saw me. In an effort to save anybody else from getting punched I stepped in [24] and began to try and handcuff him because he seemed to be the problem.

Q. All right. Were you assisted in your efforts?

A. Officer DeRyke came to the door right after me. He assisted me in putting him in handcuffs.

Q. How about the occupants of the home, did they attempt to cooperate in their –

MR. GILMORE: Objection, Your Honor. This has nothing to do with the motion to suppress. This gets back to the trial issues.

MR. MERRELL: Your Honor, the reason that I'm asking this is based on the way that the officer – the

necessity for him to be able to take control of the situation. I'm not going to go any further than this. Just what happened right there.

THE COURT: Overruled. He may respond.

Q. (BY MR. MERRELL) Officer Johnson, once again, did the occupants of the home attempt to assist you in the restraining of the juvenile or do you remember what their – how they acted?

A. They immediately turned and became verbally hostile to us.

Q. With us meaning?

A. With Officer DeRyke and myself. They were so verbally hostile that Sergeant Broadhead left his two detainees **[25]** outside and came in to make sure that we were okay, because the agitation and tumultuous behavior that was occurring between the five of them inside the house now turned on us and they became very hostile, potentially violent, towards us, enough to bring Sergeant Broadhead into the home.

MR. GILMORE: Objection.

Q. (BY MR. MERRELL) Your Honor, that's all I'm going to ask except for the fact that later on were you able to restrain the situation and were there any other injuries that occurred to any of the people as a result of their actions towards each other?

A. Officer Trent Gunn was injured during a cuffing incident.

Q. But towards the occupants themselves there weren't any other injuries at that time?

A. No. It took a while to calm down, but we did get it under control.

Q. Officer Johnson, do you believe, based on your training and experience and your knowledge of the law, and I'm asking – I'm not asking you to give a legal opinion, but based on your training and experience and your training on how to apply your observations of the facts in front of you, that what you did was reasonable?

A. I cannot see any way we could have done anything other than what we did. Once again, we were not trying to be intrusive as much as trying to prevent somebody from getting **[26]** hurt. I felt like we did it in as prudent a manner as we could.

MR. MERRELL: All right. Thank you. Appreciate it.

THE COURT: Mr. Gilmore.

CROSS-EXAMINATION

BY MR. GILMORE:

Q. Hello, Officer Johnson.

A. How are you?

Q. Would you tell me again what was the call that you received?

A. A loud party or fight. A kind of tumultuous – it was a noise complaint.

Q. It was a noise complaint?

A. Yes. Dispatched to us as a noise complaint.

Q. A noise complaint?

A. Yes. As if a party or fight were going on.

Q. Now, you at some point, much closer to the incident than now, did write a report, did you not?

A. Yes, I did.

Q. And in that report did you refer to this as a possible fight on the call?

A. No.

Q. No. What did you refer to it as?

A. My very first line in my report is I responded to the area of the noise complaint.

[27]

Q. Noise complaint?

A. Yes.

Q. Did you have occasion to testify about this call at any other time?

A. Yes.

Q. And at that time did you characterize the call as a possible fight or altercation?

A. I don't recall.

Q. If we were to refresh your memory with a video-tape of the previous suppression hearing, would you remember that you only referred to it as a loud party?

A. That may have been the case. I'm not going to dispute that. I don't remember what I responded that day.

Q. All right. Officer Johnson, you stated that there was backup called and that the reason for that was, at the time, simply to secure the premises in case there were juveniles that were going to flee, is that correct?

A. We have a standing policy that everybody available on these kinds of calls goes. There was no backup called. The standing policy is those available units on a loud noise complaint at 3 o'clock in the morning respond. I don't believe there was any radio traffic, that I recall, requesting anybody to come. The four officers who were available at that time came because that's standard protocol.

Q. But earlier in your testimony you did say that the reason [28] for this would be to secure the premises in case juveniles try to flee, correct?

A. That's one of the reasons. And probably the most prevalent reason, because it happens so frequently.

Q. All right.

MR. MERRELL: Your Honor, objection. I'd like him to allow the witness to answer the full question that was asked.

MR. GILMORE: I think he did, Your Honor.

THE COURT: What's your objection?

MR. MERRELL: The objection is he's not allowing the witness to answer the question.

THE COURT: All right. Mr. Gilmore, give him ample opportunity to respond fully and then ask your next question.

THE WITNESS: I'll just say what I said. That's fine. It's the most prevalent reason but not the only reason. There's a myriad of reasons that we respond the way we do on 3 o'clock in the morning loud noise calls.

Q. (BY MR. GILMORE) Okay. Now, you stated that one of the phrases that you heard in the front of the house was get off me, is that correct?

A. That's correct.

Q. Now, is that a phrase that always literally means that one person is physically on top of another?

A. Always, no. In conjunction with the noise we were **[29]** hearing, yes.

Q. It has other meanings, is that what you're saying?

A. I'm saying in conjunction with the other evidence we were detecting, it sounded like somebody was in trouble.

Q. The phrase does have other meanings, does it not?

A. Oh, of course.

Q. And essentially it can mean leave me alone?

A. Yes.

Q. All right. Referring back to your report that you wrote, do you have a copy of it there?

A. Yes, I do.

Q. You state that it was obvious, from the location that you were at, that there was something going on and it was occurring inside, is that correct?

A. In the second paragraph I said that it appeared the problem was occurring in the rear of the home or in the back yard.

Q. And what was the sentence just before that?

A. It was obvious from this location that some sort of altercation was occurring inside.

Q. Inside. Okay. Thank you. When you say that it appeared to you that there was a safety issue, what safety issue did you specifically see?

A. Specifically see?

Q. That you specifically saw?

[30]

A. The only thing I saw from the front of the house was open windows with darkened rooms. Some lights on in the rear of the home.

Q. So from the front of the house you actually did not see any safety issues?

A. Didn't see. Heard a lot, didn't see.

Q. And this is especially true in regard to you and the other officers, you saw nothing that –

A. No, we didn't see anything. That's why we approached closer.

Q. All right. Now, you stated that you first were able to see in the back yard when you went around the house and came to the fence, is that correct?

A. You could see angles into the back yard through the gate that comes off the driveway into the back yard.

You couldn't see an entire view, but you could see specific little things. By moving left and right we could ascertain that there were the two people.

Q. But you had to be right at the fence to do that?

A. Yes.

Q. All right. Now, you also stated that you determined to proceed the way you did, meaning to leave one person in the front and go around to the back, while you were there in the front yard, is that correct?

A. Yes. Sergeant Broadhead determined that Trent Gunn [31] needed to stay at the front door to prevent anyone from fleeing out that door.

Q. All right.

A. And also as a further safety protocol that we have in place for officer safety.

Q. But you also stated that it was after that that you went up to the front porch and peered into the window, is that correct?

A. No. Trent Gunn was left there after we determined we were going to move further.

Q. So the determination was actually made not while you were out in the yard, it was made while you were on the front porch?

A. We approached the front door. I think there was some discussion about knocking. We decided that wasn't very prudent. It wasn't a very intelligent thing to do with what we were hearing. I think at that point Sergeant

Broadhead deemed that Officer Gunn should stay by the front door while we proceeded further to investigate.

Q. All right. Have you ever knocked on the front door in a situation like this?

A. Unfortunately yes, and I've had bad results from it.

Q. What kind of bad results?

A. I've had perpetrators flee out the back door, a tough time identifying them. I've spent months of investigation. **[32]** Sometimes they're identified, sometimes not.

Q. So you were concerned that if you knocked on the front door that there might be a crime being committed and a perpetrator might flee out the back, is that correct?

A. It was something we felt necessary to take into account and adjust into our actions.

Q. All right. Now, when you got to the fence and you noticed the two individuals in the back yard, you noticed something about what appeared to be their age, is that correct?

A. They were obviously under 21 years of age and consuming alcohol.

Q. Have you ever been wrong about that before? Have you ever seen someone and guessed what their age was and never been wrong?

A. Not somebody as young as the 14 year old was that day, no.

Q. Never?

A. You know, I've been wrong with 19 year olds, 20 year olds. But we had a 14 year old there that night and he couldn't have cleared anything past 17. There's just – he was young and he was obviously under the age. There was no question.

Q. Did you – at what point did you make contact with these individuals?

[33]

A. I did not.

Q. You didn't at all?

A. No. Sergeant Broadhead took care of that.

Q. Okay. Did someone make contact – was the first contact made after you went into the back yard or prior to going into the back yard?

A. After we entered – I mean, we entered the back yard. Sergeant Broadhead detained both of those two individuals, because by all evidence it appeared that they were under age and consuming alcohol. And Officer DeRyke and I turned ourselves towards the primary problem, which was what had got us on the property in the first place, the sounds of an altercation and somebody yelling, many people yelling, inside the house.

Q. So from the outside of the fence you were concerned about – you noticed two things. One that there was still some sort of altercation going on somewhere; and, number two, there were two individuals in the back yard that were possibly under age and consuming alcohol, is that correct?

A. I guess that's a close interpretation, yes.

Q. All right. And no one made any contact with those individuals to ascertain their actual age until you did enter into the back yard, is that correct?

A. No, nobody did ascertain or talk to them through the fence.

[34]

Q. So no contact was made and their age – the accuracy of their age was not determined until at least you entered into the back yard, is that correct?

A. Counsel, I'm 43 years of age. Have you ever tried to chase a 14 year old at 43 years of age? I can guarantee you that had I yelled at them through the fence, had that been the response – I'm just saying there was reasons for us contacting them face to face.

Q. So there was a reason for you to do that, that's what you're saying?

A. Yeah.

Q. But you still didn't do it?

A. No, we did not do it, no.

Q. All right. I'd like to have you look at this. Do you recognize that?

MR. MERRELL: Counsel, can I see those pictures?

MR. GILMORE: Yeah.

(Pause in the proceedings.)

THE WITNESS: That appears to me to be the front of the home towards the west side, to the best of my

recollection, if this is the house. I haven't seen it in a while.

MR. GILMORE: I offer this into evidence.

THE COURT: What is it, counsel?

MR. GILMORE: This is a view of the front of the **[35]** house.

THE COURT: How is it marked? We're trying to make a record here. Read into the record what you're showing him and what he identified.

MR. GILMORE: It's exhibit one.

THE COURT: We have defendant's exhibit one. Any objections to the court receiving that, Mr. Merrell?

MR. MERRELL: We don't have any foundation on it, but the state isn't going to make any objection whatsoever.

THE COURT: It will be received.

Q. (BY MR. GILMORE) Do you recognize this photograph?

THE COURT: Again, counsel, what is it?

MR. GILMORE: This is a photograph showing –

THE COURT: Tell me what it's marked as.

MR. GILMORE: I'm sorry. Exhibit two.

THE COURT: All right. Defendants' exhibit number two.

THE WITNESS: That appears to be the east side of the home. The driveway and the path that I remember walking down.

MR. GILMORE: Offer this into evidence.

THE COURT: Any objections to that, counsel?

MR. MERRELL: No.

THE COURT: It will be received.

Q. (BY MR. GILMORE) This is defendants' Exhibit 3. Do you **[36]** recognize that?

A. Once again, I haven't been back to this home since this occurred, but that appears to be the same photograph you just showed me a moment ago, the same fence and side of the house.

Q. Anything different from the other one? Closer or further away?

A. Just a different angle. Maybe closer, I guess.

MR. GILMORE: Offer this as evidence.

THE COURT: Any objections to that, counsel?

MR. MERRELL: No.

THE COURT: Received.

Q. (BY MR. GILMORE) Again, I'll give you defendants' exhibit four and if you would tell me if you recognize that?

A. The same thing, a different angle.

MR. MERRELL: No objection.

THE COURT: Received. You're offering it, I assume, counsel?

MR. GILMORE: Yes.

THE COURT: It will be received.

Q. (BY MR. GILMORE) Defendants' exhibit five, do you recognize that?

A. I believe it's the same home and just, again, a different angle. You're moving further to the east here, if it's the home we're speaking of.

MR. GILMORE: Offer into evidence.

[37]

THE COURT: Mr. Merrell?

MR. MERRELL: No objection.

THE COURT: Received.

Q. (BY MR. GILMORE) Defendants' exhibit six.

A. A wooden fence. It appears to be the fence in the previous pictures, but an extreme closeup of that.

MR. GILMORE: Offer it into evidence.

MR. MERRELL: No objection to fact that it's showing it straight on. A stipulation that it is straight on.

THE COURT: It will be received.

Q. (BY MR. GILMORE) Defendants' exhibit seven, do you recognize that?

A. Yeah. I saw this last time in the dark. It appears to be the rear of the home. The windows we were speaking of in my earlier testimony with the door in the center.

Q. Can you identify which windows you saw – through which windows you saw the action?

A. Because I didn't know what was going on I stopped at both windows. I stopped at the larger window longer than I did the smaller window and then I moved to the screen door. You know, I did look through all three of these for varying lengths before trying to holler police inside.

Q. And can you identify which window you saw – do you know which window is directly in front of the refrigerator?

A. No, I do not.

[38]

MR. GILMORE: Offer as evidence.

MR. MERRELL: No objection.

THE COURT: It will be received.

Q. (BY MR. GILMORE) Now I'll give you defendants' exhibit eight. Do you recognize that one?

A. The same thing, a different angle.

MR. MERRELL: No objection.

THE COURT: Received.

Q. (BY MR. GILMORE) And then defendants' exhibit nine, can you identify that one?

A. The same thing, a straight on angle.

Q. Okay. Do you recognize – do you see the refrigerator in that photograph?

A. No, I do not. I guess it may be – I don't.

MR. GILMORE: All right. Offer as evidence.

MR. MERRELL: No objection.

THE COURT: Received.

Q. (BY MR. GILMORE) This was at 3 o'clock in the morning, officer, when you were there?

A. The time on the report indicates 3 o'clock.

Q. All right. And how much light was there in the back yard?

A. There appeared to be a porch – a dim porch light on.

Q. A dim light from the porch.

A. I don't remember any other lights. Lights emanating from [39] the home, I guess, because there were lights on in the kitchen area, so there would have been a light emanating from – there was some light emanating out into that area, probably through the windows too.

Q. All right. So there was a dim porch light and some possible light that would emanate from the kitchen area through whichever window was there by the kitchen area, is that correct?

A. You're asking me tough questions, because my focus was more, again, on safety issues. I wasn't doing a survey of the home. I can't tell you what lights were

actually on or off as far as what was shining into the back yard. I know I could see through the two windows you just pointed out and there was light emanating from those windows. Beyond that I would really be speculating in regards to my recollection from that night.

Q. Tell me, when you did see – well, let me ask you a different question first. The two juveniles that you observed, were they in an agitated state?

A. No. They didn't appear like they were part of this problem. I didn't see anything to indicate that to me.

Q. All right. From your training and experience, would you anticipate that if there was a fight going on that juvenile males of that age would be relaxed or would be agitated and interested and watching?

[40]

A. Counsel, I've seen the entire spectrum on this. I've seen juvenile males ordered to stay out of it, pushed to other rooms. I've seen them actually be made to leave the home. I've seen juvenile males who can't stay out of it. I think that's respective of the individual family, how much control the adult figures have and how subservient the children are to those things. If you're asking in 16 years, I've seen one end of that to the other. I've seen kids who wouldn't respond at all and kids who were completely subservient.

Q. But they didn't seem particularly concerned about the situation?

A. I didn't see a lot of concern coming from them in the time I watched them, no. They were talking about it and one of them indicated that he's had too much to drink.

I believe that was in reference to what was going on inside but, you know, that's speculation on my part.

Q. Right. Now, you mentioned, officer, that when you observed the juvenile inside the house, you characterized it as him trying to get free, is that correct?

A. I remember his fist was up – very distinctly his fist up and the adults having ahold of his wrists and him wedging, trying to get his fist in this manner out of the grips.

Q. Trying to break free?

A. Yes. And he was twisting and turning and writhing and **[41]** they were trying to press him into some type of control against that refrigerator.

Q. And you specifically said you heard the phrase calm down?

A. Calm down was one of the things I heard. It appeared to me that the adults were trying to calm this juvenile down, yeah. I don't think they were trying to agitate him. It didn't appear that way.

Q. All right. Now, you stated that when you were on the outside of the house looking through the door that you saw the juvenile hit one of the adult males, earlier in your testimony, correct?

A. Yeah.

Q. All right.

A. Just referring back to my notes, but that's what I saw that night, was one of the hands come free of the

juvenile and him land a punch squarely on the face, enough to draw blood from one of the adults.

Q. All right. I want to refer to the report that you wrote. Could you read those two highlighted sentences for me.

A. I will, but this doesn't refer to what I just talked about, which is in the above paragraph. If you're asking me a question to read this in conjunction with what you just asked me, the paragraph above covers that.

Q. Would you please read those.

MR. MERRELL: Mr. Gilmore, counsel, could you tell [42] me where in this that you're talking about?

MR. GILMORE: Yes.

(Pause in the proceedings.)

THE WITNESS: The two highlighted lines, "I stepped through the rear door and said police." And then three or four lines down you have highlighted "the male adult who had been punched was now leaning over the sink, running water from the tap and using his hand to scoop water into his mouth."

Q. (BY MR. GILMORE) Okay. Now, it seemed to me that you said earlier that you saw that occur from the outside of the house, is that correct?

A. I may have said that earlier.

Q. Okay. But here in your report you say first of all you stepped through the door and then saw?

A. I saw the punch from outside the house. The actual scooping of the water was probably more from inside the house.

Q. I haven't heard you say that there was any further punching, nor have I heard you say that there was any attempt at punching, and that you didn't see the juvenile receive any punches or anything like that, only trying to calm him down, is that correct?

MR. MERRELL: Objection. Your Honor, Mr. Gilmore stopped me at that point and I didn't want to go any further. **[43]** I could have gone further. If we'd like to have me examine that area a little further, I certainly could.

THE COURT: Rephrase your question, Mr. Gilmore, and limit it up to the time that Mr. Merrell ceased his direct examination.

MR. GILMORE: All right.

THE COURT: If you want to go further –

MR. GILMORE: Let me ask something concerning the report, may I?

THE COURT: Go ahead.

Q. (BY MR. GILMORE) In the report that you wrote, did you ever mention any other punch or any other threat of punches that you saw?

A. No. In the paragraph before, which I referred to, I said "I observed the juvenile jerk a hand free and punch a male adult who was wearing a white shirt. The punch hit the male adult in the mouth. This caused a flurry of activity that appeared to be an escalation of the situation.

The entire sequence of events took less than ten seconds while I was observing." This all was observed from outside and that punch escalated what was going on.

Q. So at no point in your report did you ever mention anything other than that one punch?

A. And the escalation that occurred afterwards.

Q. All right. Did you notice any injuries?

[44]

A. Yeah.

Q. What injuries did you notice?

A. The male adult was bleeding from the mouth. He used a towel. There was a towel there that he was dabbing his mouth with and drawing blood from his lips and mouth.

Q. Is that person here?

A. Yeah. I later identified him. It was, I believe, Doug Olsen, but I want to look here for just a second. (Pause.) well, I'll have to read through my report long enough to keep us here a while. I believe that –

Q. That's fine with me.

A. I believe that individual was Doug Olsen.

Q. You believe the individual was Doug Olsen. And have you previously identified Doug Olsen as being the adult male that had been punched?

A. Today?

Q. Not today, no, but previously, in the previous suppression hearing?

A. I don't recall. I honestly don't recall.

Q. Now, officer, you mentioned that the situation settled down rather quickly; gradually, but rather quickly, as soon as everyone was made aware of your presence, is that correct?

A. It de-escalated in a step by step basis as each person became aware of the officer, yes.

Q. How close was this altercation to one of the windows [45] there?

A. Oh, probably directly inside that kitchen window by six, seven feet, I would guess.

Q. All right. Did you attempt to get their attention without entering the house?

A. I yelled police from the doorway, yes.

Q. But you did open the door?

A. Yeah. It was loud enough even when I opened the door that they couldn't hear me. I mean, you have to realize how loud this was. I opened the door in an attempt to get some attention. It was so loud that yelling through the door, I might as well walk up and yell at the wall.

Q. Did you attempt to get their attention through the window?

A. No, I did not. That would have been an officer safety issue, where they could have ducked down, brought up a weapon. I wanted to be where I could observe them.

There was obviously a fight going on here. For my safety I wouldn't –

Q. Were you aware of any weapons?

A. No, not at that time, but that doesn't mean there wasn't one.

Q. Was there anything to indicate that there might have been a weapon?

A. You bet. You're in a kitchen. Kitchens are full of **[46]** weapons.

Q. And did anyone say – did you hear anything about a weapon?

A. No, I didn't hear anything about a weapon.

Q. All right. And you were concerned for your safety in the event that you knocked on the window while you were outside the house, is that correct, is that what you just said?

A. With the door that close I couldn't see any prudent or reasonable to knock on a window when a door is as close as you show in those pictures. I mean, if you're going to make contact with somebody, make contact at the door.

Q. On the report I'd like to point to you this highlighted sentence. Can you tell us who you identified as the adult male in that report that received the punch?

A. I put in here "Shayne was still at the sink rinsing his mouth." I got to clarify this that I did not arrest any of these individuals. I did not transport them, I didn't book them. I am not aware if I made a mistake here or not.

Q. All right. So at least at one point there was an identification of one adult male and two other times there's been an identification of a different adult male, is that correct?

A. That's correct. I could be mistaken on my identifications.

MR. GILMORE: Okay. I think that's all.

[47]

THE COURT: Redirect, Mr. Merrell.

MR. MERRELL: Just real quickly.

REDIRECT EXAMINATION

BY MR. MERRELL:

Q. Officer Johnson, counsel asked when you arrived – the context of the call. The call that you received from the dispatcher related to a loud party?

A. That's correct.

Q. When you arrived there, based on your training and experience, did it appear to you, based on what you observed with all of your senses, to be simply a loud party?

A. To clarify, from down at the intersection when Officer DeRyke and I first heard the noise, yeah, it could have been a party. It was loud at the corner, but it could have been a party.

From the corner of the property at the curb, with the articulations that we heard and the thumpings, no. At that point I was not thinking party at all. Neither was any of the officers there.

Q. Have you had experience arriving at loud parties?

A. Many, many, times.

Q. Have you had any experience arriving at disputes at residences, domestic disputes?

A. Again, many, many times.

Q. And based on your experience did you make the decision [48] that this was not the loud party, happy kind of party, but was a domestic dispute kind of problem?

A. There's no happiness here, counsel, I can tell you that. In using that term, there was not. This was some kind of altercation involving a dispute or anger and it was not your frivolous loud juveniles or adults drinking and having a good time with music playing kind of party. This was an altercation.

Q. Officer Johnson, if you had arrived at that residence and all you heard were the sounds that were, in your training and experience, representative of a loud party, would you have proceeded the same way you did in this instance?

A. No. There would have been a different set of protocols enacted.

Q. Officer Johnson, are you trained in the use of other of your senses other than your sight and vision?

A. Yes.

Q. Give me some examples. How about your smell, are you trained in the use of your smell?

A. Yes. Oftentimes I detect drug use by the use of smell. I can detect alcohol use by the sense of smell. Other violations by the sense of smeli.

Q. In fact, are you trained in the detection of the odor of marijuana to the extent that you're allowed to search a vehicle based on your detection of the order [sic] of marijuana?

[49]

A. I believe with my experience the court would accept a determination of –

MR. GILMORE: Objection. That's purely speculation.

THE COURT: The objection is sustained.

Q. (BY MR. MERRELL) How about hearing, have you had experience and training your hearing to –

A. Training and extensive experience in hearing different kinds of problems.

Q. And as an officer are you obligated to use all of your senses in the best way you can to determine what is occurring in a particular situation?

A. The answer to that I guess would be yes.

Q. So you're not restrained only to your sight?

A. No.

Q. All right. Thank you, officer. Officer Johnson, when you arrived at the fence and looked in the fence at the back, was the light sufficient to be able – the light coming from the house, coming from the dimly lighted

bulb on the back of the house, sufficient to be able to observe the juveniles?

A. Yes.

Q. You could observe, based on that light, what ages they appeared to be?

A. One of them actually came from the rear door area when we first arrived there and walked over to the table. I saw part of that walking and sitting down at the table. Yeah, I could **[50]** see him fairly clearly coming out of the lighted area over towards the table.

Q. All right. Officer Johnson, in your training and experience, if the juvenile males had had some alcohol to drink at that time, is it potentially the situation that they could have – that they would have been more or less likely to (unintelligible).

MR. GILMORE: Objection. That calls for a conclusion.

MR. MERRELL: Well, let me finish.

Q. (BY MR. MERRELL) That they would have been more or less likely to –

THE COURT: I'll sustain the objection as leading.

Q. (BY MR. MERRELL) Officer Johnson, do you have training and experience in observing juveniles that have been drinking?

A. Training and experience, yes.

Q. In observing juveniles that have been drinking, do they become more calm or more agitated when they drink?

A. Again, that's an individual thing, but there are – there are juveniles who become calmer. There are also juveniles who become more agitated and present problems.

Q. All right. When you observed these juveniles, were they drinking?

A. Yes, they were.

[51]

Q. Would it have been possible, based on your training and experience, that these juveniles were more relaxed as a result of their drinking?

MR. GILMORE: Objection. That calls for speculation.

~~THE COURT:~~ I think he can respond.

THE WITNESS: It's possible. Obviously, as I said before, some juveniles become calmer as do adults. The contrary occurs in some individuals, too.

Q. (BY MR. MERRELL) Officer Johnson, when you arrived at the door – there appeared to be some indication by counsel's questions that perhaps the – that the defense believes the occupants of the home were appropriately restraining this youth and that they had the situation perhaps under control?

A. I saw no control.

Q. Did it appear to you that they were going to be successful in restraining this juvenile without further

problems occurring and safety situations and safety concerns being – arising at that time?

A. It didn't appear to me that this was a situation that would readily resolve itself.

Q. And based on your training and experience, do you have training and experience in resolving situations like this where there is an altercation that is underway?

A. I believe that's part of our public duty. That's what we [52] do.

Q. All right. Is that why you entered the home?

A. I entered the home because people were being hurt.

Q. All right. Once you saw a punch being thrown, what does that do with respect to your heightened level of interest or your perspective on the safety issues?

A. Obviously a crime was just committed. People are at risk and are in danger. There's an obligation in the police function to intervene at that point.

Q. All right. Counsel made a representation to you that perhaps the person that was punched was Shayne Stuart rather than Doug Olsen. Does it matter to you at all, and would it have mattered to your entry into the home at that time whatsoever, the name or who the person was that was punched?

A. No, sir, it wouldn't. There was a violation and the names were not applicable to the crime.

Q. All right. At the time that you observed what was occurring in there, you stated that you had concern for

your safety as a result of it happening in the kitchen and the possibility of a weapon?

A. We are trained, and based on experience, personal, the kitchen is a dangerous place. There are access to many hidden weapons in a kitchen. We always operate in a kitchen environment in a heightened state of officer safety and security. There are many, many reasons for that. All of us **[53]** can think of our own kitchen and how many weapons are available in a kitchen environment.

Q. Officer Johnson, were you also concerned for the safety of the occupants of the home at that time?

A. Yes, I was.

Q. Was the window that you observed this through opened or closed, do you recall?

A. You could see through it clearly.

Q. But was it opened?

A. You mean as far as –

Q. Could you – would you have been able –

A. The windows were closed. I don't remember any windows being ajar or open.

Q. In common sense, would it have made more sense to converse with the occupants through a screen door than through a closed window?

A. I can't think of any time when a door has been that close that I've tried to make contact through a window, nor would I understand a reason to do that.

MR. MERRELL: All right. Thank you, officer.

THE COURT: Mr. Gilmore.

RECROSS-EXAMINATION

BY MR. GILMORE:

Q. Officer, did you hear any injury?

A. Hear?

[54]

Q. Uh-huh.

A. I guess I heard the individual at the sink spitting blood.

Q. You didn't hear any injury, though, right?

A. No.

Q. Did you smell any injury?

A. No, I didn't smell any injury.

Q. All right. It appears that at one point you thought there might have been an injury, is that correct?

A. At one point I observed an individual at a sink spitting blood into both the sink and a towel, which to me is an injury that was caused by the punch I saw thrown.

Q. And that wasn't until you were already in the back yard?

A. Yes, I was in the back yard when I saw that.

Q. All right. Was there – did you see or hear any threat to life or limb specifically?

A. Specific threats to life or limb, there was a lot of swearing going on and threats being exchanged, as there are in fights. You know, there were no threats to life that

I recall. But obviously there were comments made, you know, in the heat of the moment that very easily could have been deemed as a threat to limb because they were threatening each other. The young juvenile was definitely threatening, you know.

This situation had three to five people yelling [55] simultaneously. They were not yelling pleasantries to each other. They were yelling threats. They were yelling in an effort to calm the situation down and the other half was yelling in an effort to say you let go of me or else kind of thing. This was tumultuous. And if you're asking me if I deemed that as a threat to limb, yeah, I do.

Q. That was just a subjective thought on your part? You didn't see anything specific that would indicate a definite threat to life or limb, is that correct?

A. No threat to life. I did see threat to limb because of the violence in the situation involved.

Q. A specific threat, a weapon, a chance for –

A. I don't think you need a weapon, when there's a fight going on, to get your limbs – the way the law defines it.

Q. You indicated that the adults were restraining the juvenile and that at one time one of the juvenile's hands came free and he was struggling and flailing, is that correct?

A. Yeah.

Q. Now, if indeed one of the adults was struck, assuming that that's true, it's possible that that was simply an accident from the struggling, is that correct?

A. No. He swung the punch and landed it.

Q. You could see his intent?

A. I could see the punch land where he aimed it.

[56]

Q. I see. Now, when you went in did you offer any medical treatment to anyone?

A. Yeah, I did.

Q. What treatment did you offer?

A. I went over to ask if he was okay and if he needed any help. I was ordered out of the home.

Q. So you complied?

A. No.

Q. Oh?

A. No. There were people going to be taken into custody for the assault.

Q. The juvenile?

A. The juvenile was already in custody at that point. I went over to see if he needed any help and these people were not in the mood to really converse calmly with anyone at that point. I was – the repeated comments we got were that our presence wasn't needed.

Q. Was there blood on the – on one of the adult males when he was arrested?

A. I don't recall. I didn't place him into handcuffs. I didn't transport him, I didn't book him.

Q. Was there blood all over that white shirt?

A. I don't recall.

Q. But you were there, right?

A. Yeah, I was. I was dealing with other things and I don't [57] recall that.

Q. Was there blood on the walls or anything?

A. No, not that I recall. The towel is the only thing I remember blood on.

Q. Okay. And did you offer medical assistance to anyone else?

A. I didn't see anyone else injured.

Q. Did you check to see if there were any?

A. If you mean did I ask anybody else if they were injured?

Q. Correct.

A. I don't recall if anybody was checking to see if anybody else was injured. I don't think there was.

Q. So actually injury was not a really big concern of yours at that time, was it?

A. It was, you bet it was. Injury was a concern of mine for entering the home, because I saw somebody get injured and I didn't know who else was injured prior to my observing what I saw.

Q. Can you tell us exactly how serious the injury was that you observed and what kind of treatment it required?

A. I'm not a doctor.

MR. MERRELL: Objection. I'm not sure if I understand the relevance of this. We understand that there was a fist that was thrown and that connected against a face. I think that we can all probably stipulate that that is [58] something that the officer should intervene on. If we're going to go forward and try and talk about what happened later on and what the officer's investigation determined, we might as well have the whole trial right now.

THE COURT: I don't think Mr. Gilmore is willing to stipulate that that's something that he should have intervened in or he wouldn't be here today, but we are going a little bit further than the direct examination.

MR. GILMORE: Let me illustrate why I ask that question, Your Honor. There is – whether or not the circumstances were exigent and required the intervention, some of the cases say that you've got to show that there was a threat of danger to life or limb. That is, serious bodily injury. All I've heard so far, if anything actually happened. I have a question as to whether there was any injury whatsoever. There's no evidence of any other than what this office said. And he's identified two different people having received that injury. The most you can say is there was a bloody lip.

THE COURT: You may pursue this, but let's not get bogged down in it. And only for the aspect as to, quite frankly, whether or not he thought he should go in to administer aid at that point in time.

MR. GILMORE: I'm sorry. I didn't hear you.

THE COURT: The only reason why I'm allowing you to [59] go into this is to see whether or not this

individual thought that aid needed to be given to the person already injured. The other question is whether other injuries going to occur. That's the only thing that the court it [sic] concentrating on, so limit your questions to that.

Q. (BY MR. GILMORE) Did you examine the person that you claim you saw struck?

A. They would not allow me to examine him.

Q. After he was handcuffed he didn't –

A. I didn't handcuff him.

Q. Were you there afterward?

A. When he was handcuffed?

Q. Yes.

A. I never had any contact with him in a manner that way. I didn't place him under arrest.

Q. Do you happen to know whether or not anybody else examined him to see if he needed treatment?

A. I don't know that. I'm sure he was examined at the jail. It's required policy, that I do know.

Q. And do you know whether or not any treatment was offered at the jail?

A. I do not.

Q. To anyone?

A. I was not at the jail.

MR. GILMORE: Okay. Thank you very much.

[60]

THE COURT: Anything further, Mr. Merrell?

MR. MERRELL: Just a couple of questions.

FURTHER REDIRECT EXAMINATION

BY MR. MERRELL:

Q. Counsel represented that what you observed from the side of the house and as you were walking down the driveway, and what you heard as you entered in through the fence on the side, was based on your subjective thought that there was an altercation occurring in the back. What's that subjective thought grounded in?

A. I'm not sure I understand the question.

Q. Do you have training and experience that would give some foundation to that subjective thought?

A. Yes. I've heard many fights. I've heard many angry, tumultuous conflicts. This sounded like another one.

Q. Did you have any reason to believe whatsoever, on a reasonable basis, that this was anything but an altercation that could have had serious consequences?

A. Had I felt it was anything else we wouldn't have proceeded in the manner we did. Simply the reason we proceeded the way we did is because we felt, and I felt, that we had an altercation occurring.

Q. Counsel asked you a question if you actually saw an injury occur before you actually entered into the back yard and went into the area there?

[61]

A. No, I did not.

Q. Does it make sense, and based on your training and experience, to actually see injuries with your eyes before the police officer – before a police officer should intervene into a situation?

A. Counsel, I think if I entered onto your curtilage and heard you screaming for help and left, my job at a minimum would be in jeopardy. I think when somebody is yelling for help and when you hear a fight going on, there's a basis for us to investigate that.

Q. When you arrive at a domestic violence situation and you hear an argument going on behind a door, say it's an apartment building or something, do you – you haven't seen an injury occur at that time, have you?

A. No.

Q. But do you continue to investigate at that time also?

A. Obviously, yes.

Q. Is that what you've been trained – the way you've been trained?

A. That's the way it should be, yes.

Q. Based on everything that you saw and everything that you observed upon all of your senses, was it reasonable for you to go into the back yard?

A. Yes.

Q. Would it have been unreasonable, based on your training [62] and experience, to not enter the back yard and go in and find out what was happening in the back?

A. Very much so.

MR. MERRELL: Thank you, Officer Johnson.

THE COURT: Anything further, Mr. Gilmore?

MR. GILMORE: Very briefly, Your Honor.

FURTHER RECROSS-EXAMINATION

BY MR. GILMORE:

Q. Officer you stated that you didn't examine the adult male that had been struck because you didn't handcuff him, is that correct?

A. I think, when I first approached him and asked him if he was all right, I received a diatribe of hostility back. There was no cooperation there. You understand how that goes.

Q. And you stated that – I asked if you examined him after he was handcuffed and you said you weren't there, you didn't handcuff him, is that correct?

A. I was not the one who handcuffed him.

Q. I'd like you to read this highlighted sentence in your report, please.

A. It says I walked over and handcuffed Shayne, but I'm not sure that my report here is correct. Like I said, if I've got the wrong name in the report, that's a possibility.

Q. All right. Would you please read the highlighted – the [63] first highlighted sentence on the previous page.

A. "I put Shauna in a wrist lock and handcuffed her."

Q. Thank you. So is it possible that your report is wrong in both regards, when you state you didn't handcuff anybody and your report says you did handcuff –

A. I didn't handcuff any of the males that I recall. I do remember talking to the two females over on the couch by the window. Yeah, I did handcuff both of them.

Q. You did handcuff both of the females, then?

A. Yes, I did, because that's where I was stationed to stand at the time. And to keep those two from –

Q. So what you're stating here is that it's entirely possible that your report is incorrect?

A. In what manner? In what area are you referring to?

Q. Well, I asked you if you – you said you hadn't handcuffed anybody and then you said you hadn't handcuffed the person who was –

A. I'll clarify that. I did not handcuff the males that resisted. That was done by Officer Gunn and Sergeant Broadhead. I did handcuff the females. I ended up not booking anyone. I did not transport any of the adults, that I recall. I transported the juveniles to Archway. We had differing duties as this thing unfolded. I did place the two females in handcuffs, I do recall that very clearly.

Q. Okay. So where it says I walked over and handcuffed **[64]** Shayne, what you're saying is that your report might be wrong?

A. It may be there, yeah. That line may be incorrect. I'm not real clear on that.

Q. But this was done a lot closer to that time, correct?

A. Probably within 48 hours of the incident.

Q. And the intent of writing a report like this is so you do remember, is that correct?

A. That's correct.

Q. And that you do get it correct?

A. That's correct.

Q. When it comes time to testify?

A. But I'll tell you right now, counsel, I've been wrong before.

MR. GILMORE: I see. Okay. Thank you very much.

THE COURT: Thank you. You may step down.

MR. MERRELL: The City would rest at this time.

THE COURT: Mr. Gilmore.

MR. GILMORE: I don't think we'll call any witnesses, Your Honor.

THE COURT: Closing argument. Again, Mr. Gilmore, it's your motion. Even though it's the state's

burden I'll give you the opportunity to address the court first.

MR. GILMORE: Your Honor, I think it's important to bear in mind that, as has been pointed out in a large number **[65]** of cases, especially starting with Katz, that warrantless entry into a person's home is the chief evil against which the Fourth Amendment is directed. This is not just some sort of procedural hurdle that police officers need to overcome. It's characterized as an evil and it's characterized as something that needs to be guarded against, such that a warrantless entry into a home is per se unreasonable except in regard to certain very few exceptions. Those are well established. They have to be well delineated and they have to be very specific in nature.

In addition, if there is going to be a warrantless entry, State versus Beavers makes it very clear that there needs to be not only exigent circumstances to support a warrantless entry into the home, but there has to be probable cause. There needs to be some sort of probable cause that a crime has been committed; and exigent circumstances that warrant the police acting immediately in entering into a home rather than waiting.

Obviously we don't have hot pursuit of a fleeing suspect. We don't have any claim that there was going to be any type of evidence destroyed. And we don't have anything specific that could be articulated as to what particular threat there was to any of the officers. The only thing that we have at most is the claim that there was an injury to some person. Oddly enough, the officer points out that there wasn't a **[66]** further threat. That whatever happened had already happened. He was already separated from the individual taking care of whatever injury

was claimed to have been – needing attention. That was already – that part was definitely already under control.

In addition, the Court of Appeals has pointed out that – well, the Supreme Court has pointed out that if you're going to rely on exigent circumstances that doesn't apply to minor offenses. In Welch versus Wisconsin the Supreme Court made that clear. You might have some sort of exigent circumstances there, and possibly some probable cause, but if the underlying offense is a minor offense then these warrantless exceptions simply don't apply to that.

That's basically what we have here. We have a minor – if there's any offense that was seen prior to the entry of the home, it's a minor offense. Actually, it appears that it wasn't clear whether what they saw was before or after they entered the home. If it was after they entered the home, then there simply is no probable cause nor exigent circumstance that warrants the entry into the home. That is the critical issue, Your Honor.

Prior to that they already had entered the back yard. They had already gone down the curtilage of the home where, our contention is, there's a privacy interest there. No probable cause nor exigent circumstances at that point.

[67]

They entered into the back yard. Again, no probable cause nor exigent circumstances at that point. The most that has ever been argued is that after viewing a situation, once they've already entered into the back yard, then they're claiming that some minor injury that they saw occur created exigent circumstances to then enter into the house. But that had already ceased. Once the person is – if

there was any danger, once that person is out of danger then the exigent circumstance [sic] no longer exist.

It sounds as though the prosecution is relying upon some plain view offenses to bolster their claim that it's okay to go into these areas that have a protective privacy interest. What they're saying at most is that from viewing some juveniles they thought might be under age, they might be drinking alcohol, but there was no verification of that until they'd already entered into the back yard. That at most gives rise to reasonable suspicion to continue an investigation, to ask for identification, to see how old they actually were perhaps. That does not give rise to probable cause. Especially it doesn't give rise to a probable cause of a serious offense. Nor at that point were there any exigent circumstances.

In addition, Your Honor, it appears that the officers went well beyond the scope of any exigent circumstances that existed once they entered into the home. It was clear that **[68]** the person who – if anyone was in danger, the person who was placed in danger, or could possibly have been in harm's way, or they claim was in harm's way, was already separated from the other individual. That's the extent to which they could have gone. Once the exigency has been met, that's as far as they can go.

In summation, Your Honor, the prosecution has not asked the court to find exigent circumstances according to something that has been specifically established by law; not according to any well delineated set of exigent circumstances that have already been recognized. They're asking this court basically to expand that recognition and create some new exception to the warrantless entry requirement.

I'd like to point out that probable cause and exigent circumstances, the standard there is not the subjective standard of reasonableness according to the officer in the field. Probable cause is always an objective standard, regardless of an officer's training, regardless of his experience. This is one of the reasons that warrants need to be ruled upon by a neutral magistrate, so that whether or not there is probable cause can be determined objectively. It's not a subjective matter whatsoever.

If suddenly this has become a subjective matter then there is protection to the Fourth Amendment. That surely minimizes what has been termed a protection against a chief **[69]** evil that the Fourth Amendment was designed to raise boundaries to protect the citizens against. Thank you, Your Honor.

THE COURT: Mr. Merrell.

MR. MERRELL: Thank you, Judge. Counsel has made great arguments and I appreciate his arguments, but I do believe that we've certainly brought into evidence everything that's necessary to deny this motion to suppress at this time.

The officer testified that as he arrived at the home he heard fighting and noises, noises coming from the back of the house. He observed alcohol at the front of the house. They observed, based on their training and experience, exactly what would constitute, number one, an exigent circumstance based on a possible law violation. And, number two, an exigent circumstance based on safety of the occupants of the home.

Mr. Gilmore attempts to somehow belittle the safety factor. It's not only the potential violation of a law that the

officers are observing. Officers may be able to enter onto property based on their reasonable belief that a safety violation is occurring to aid another, an occupant of a home, whether or not they believe that an actual legal violation, criminal violation, is occurring at that time. And should they observe criminal violations other than what was observed **[70]** when they entered into the home, the residence, based on what their safety concerns were, that evidence would not be excluded because exigent circumstances incorporates the safety issue, not just the criminal issue.

But the officers here determined, based on their training and experience, that they had a reasonable belief and that is what the standard is. It's not just an objective standard based on what Mr. Gilmore thinks or what the Supreme Court thinks. It's an objective standard based on what this officer believes and what – it says in State versus Wells, "The existence of exigent circumstances must be based on the reasonable belief of the police officer."

He's testified today that he reasonably believed, based on his training and experience, 16 years of training and experience, that there was an altercation that was occurring in the back of this home that needed to be attended to in the way it was attended to. That were they to go to the front of the house, knock on the door, that, number one, there could have been safety issues that could have occurred to the officers; safety issues that could have occurred to the occupants of the home. And as opposed to what Mr. Gilmore states, evidence could have been lost. He stated – Officer Johnson stated that people could have fled at that point, as has been his experience.

As opposed to what Mr. Gilmore states that it must be [71] more than a minor violation of the law, I really have no objection with that. Certainly that is the law, that if the minor violation of the law is a code violation and they see that perhaps there is something wrong with the house, they can't necessarily go in the back and investigate further than that.

What occurred here was something much more serious. It was what appeared, in the training and experience of the officer, to be a dangerous situation, an assaultive situation, a domestic violence situation. What the court stated in State versus Beavers, which was cited by counsel, is "the court has defined exigent circumstances as those that would cause a reasonable person to believe that entry was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts."

So the standard certainly is reasonable officer. Officer Johnson stated that in his training and experience he cannot see any other way that they could have possibly proceeded in this that would have been reasonable under the circumstances.

With respect to the plain view argument stated by counsel, that somehow the officers needed to make a further determination that the juveniles, the individuals who appeared to be juveniles through the fence, were in fact [72] juveniles and were in fact consuming alcohol, the Utah Court of Appeals stated that "an officer must only have a reasonable belief that certain items may be useful as evidence of a crime. It does not demand any showing

that such a belief be correct. A practical nontechnical probability that incriminating evidence is involved is all that's required." That's State versus Kahr, citing a Utah Supreme Court case Texas versus Brown.

Your Honor, had the officers not entered – had Officer Johnson not seen what occurred in this incident and observed and intervened, we don't know what would have happened. Officer Johnson testified, as he stated in his report, that after this punch was thrown the situation escalated. The situation became more – there was more commotion going on. It wasn't defused by the exit of the one individual that was punched. In fact, it probably became worse because there were less people restraining him at that time. Officer Johnson felt reasonably that he needed to enter into the home and take control of the situation, which he did.

The city would submit it.

MR. GILMORE: Your Honor, the prosecution's approach to this issue of exigent circumstances and probable cause makes light of the statement that the Supreme Court has made that it is a particularly heavy burden for the prosecution to show that what the officers have done falls within that [73] exception. What they are basically arguing is virtually at any time, if they can make the statement that they reasonably this or that, they can enter onto the private property of an individual. That's not a particularly heavy burden whatsoever.

The exceptions were carved out to the warrant requirement and when that happened the Supreme Court specifically stated that these should be well established exceptions. They should be well delineated. They should be specifically established, well delineated and they should be

few in number. The prosecution hasn't shown that this falls within that category whatsoever.

State versus Beavers makes it very clear that when you're talking about the possibility, the threat, of harm to an individual, it's not just a matter of some minor harm. You're talking about serious bodily injury or threat of life or limb. I believe that that's exactly the – they quote U.S. versus Bute, I believe, in the life or limb characterization.

What degree of personal harm, what degree of harm to an individual, warrants the intrusion into a private residence? What degree of a minor offense – what degree of an offense warrants an intrusion into a private residence? It was clear in State versus Rosted that a DUI was not going to be serious enough. As a matter of fact, Justice Renquist made the – in **[74]** his dissent clearly thought that it had to be a felony and that misdemeanors were excepted.

State versus Persiphal makes it very clear that there must be some serious bodily injury that is threatened and there needs to be some specific threat of bodily injury.

Then we come to the issue do we have here reasonable suspicion to investigate further and see what the situation is, or do we actually have probable cause of the commission of a crime? And at what point do we have that? Is it before – certainly there is no probable cause before walking down the driveway and entering onto the curtilage area of the home. Certainly there's no probable cause when they entered through the gate into the back door. And there is a question as to whether or not they had probable cause of any serious offense once they're in the back yard.

Added to that, there's no claim of exigent circumstances until they're also in the back yard. That exigency must be a serious exigency and the offense that they're claiming must be a serious offense. The Court of Appeals made it very clear, in determining whether you've got a minor offense or not, is that we're looking not just at the offense itself. We are comparing the offense to the protection of the Fourth Amendment. That's a serious protection. That's a specific protection. That protection overrides an awful lot of things.

[75]

They've got to be able to say that the offense that they're claiming to have probable cause concerning and the exigency overrides that serious major protection of the Fourth Amendment to the United States Constitution. I haven't seen any real attempt at that. All that they've ever said is that the officer at the time, in the circumstances, according to his own personal set of belief and training, thought that it was reasonable.

It's quite clear that constitutional protections are not placed in the hands of officers in the field to make that decision. That is something that is reserved for a neutral magistrate, a neutral judge. If he can't show that it would have objectively met that standard, then it doesn't meet the standard.

Your Honor, there simply was no exigent circumstance that warranted an intrusion onto this private property. There was no major offense, there was nothing but minor offenses, that were even claimed. As a matter of fact, I don't even believe that the offense that they're claiming to have seen, that triggered the whole thing, was ever charged to anyone. The officer's whole action belied the

existence of any injury or any threat of injury to anyone. No one was treated, no one was claimed to have been injured on the book-in reports. There was no blood on anyone's shirt. There was no real evidence of any injury nor any substantial evidence that **[76]** could be reasonably articulated that was a threat to life or limb here, Your Honor.

THE COURT: Thank you, counsel. In ruling on this, let me refer to a few things. As relates to houses and the Fourth Amendment protection, there's a case of United States versus Albrechtsen, 151 Fed 3rd 921, that says as follows: "Nowhere is the protective force of the Fourth Amendment more powerful than it is when the sanctity of the home is involved. The sanctity of a person's home, perhaps our last real retreat in this technological age, lies at the very core of the rights which animate the amendment. Therefore we have been adamant in our demand that absent exigent circumstances a warrant will be required before a person's home is invaded by the authority."

Then the next question is what would comprise exigent circumstances? I'll refer to another case, that of United States versus, I guess it's Wihbey. W-i-h-b-e-y. 75 Fed 3rd 761. "The constitution requires that police normally obtain a warrant before entering a person's home to make an arrest. In determining whether an exigency justifies a warrantless search and seizure, the test is whether there is such a compelling necessity for immediate action as will not brook the delay of obtaining a warrant. Exigency determinations are generally fact intensive and must be made on a case by case basis."

[77]

On evaluating it on a case by case basis, they have set forth certain things which comprise or would make an exigent circumstance. In United States versus Reed, 69 Fed. 3rd 1109, some of these have been recognized. It says, "Recognized situations in which exigent circumstances exist include danger of flight or escape. Danger of harm to police officers or the general public. Risk of loss, destruction or removal or concealment of evidence and hot pursuit of the fleeing subject."

Now, the case before the court, when I evaluate this on a case by case basis, the court finds that there were – it is an interesting case. This is a very interesting case. I think this is really where the appellate courts have said you have to determine it on a case by case basis.

When Officer Johnson and his compatriots arrived at the scene they were out front. From his testimony it was obvious that knocking on the door wouldn't have done any good, knocking on the front door. The court finds that his actions in going down the driveway were appropriate.

When he got to the slat fence he could look inside the slats and see two juveniles who were drinking at that point in time. Again, we're getting into a gray area now. Did he have probable cause to go in that area? The court finds that he did, when they entered that area at that point in time, because there were two juveniles he could see drinking.

[78]

Then he knew that there was an altercation going on in the home. He went up to the windows and he observed, at that point in time, an altercation taking place. Four

adults had a juvenile apparently in some sort of – apparently trying to control him. The juvenile at one point got a hand loose and smacked somebody in the nose.

The court does not find at that point in time that exigent circumstances existed to just willy-nilly go through the door. He could have knocked on that door. Even though his testimony was that there was a loud tumultuous thing going on in there and they probably wouldn't have heard him, he has an obligation at that point in time, imposed by the Fourth Amendment of the constitution, to at least attempt that. You just don't go in somebody's house. You knock on the door and you say what's going on. At that point in time, if then they have resisted or something, it could have led to something else, but he didn't do that. The officer just went in right through the door and you don't do that.

MR. MERRELL: Your Honor –

THE COURT: No, Mr. Merrell.

MR. MERRELL: Can I just say one thing?

THE COURT: No, you can't. You already had your opportunity. I'm not here to argue with you.

MR. MERRELL: That mischaracterizes the testimony, though. The testimony was that he announced himself.

[79]

THE COURT: Mr. Merrell, I'm not here to argue with you. You've said what you had to say. The court is making its ruling.

MR. MERRELL: He announced himself and nobody heard him.

THE COURT: Mr. Merrell, do you hear me?

MR. MERRELL: Yes, I do.

THE COURT: Do you see this bailiff over here?

MR. MERRELL: Yes, I do.

THE COURT: You know she can take you back to that little holding cell back there, do you understand that?

MR. MERRELL: I understand that.

THE COURT: All right. Then control yourself. That will be the ruling of the court. Mr. Gilmore, will you prepare the appropriate order?

MR. GILMORE: I will, Your Honor.

THE COURT: I'm not sure how this affects the outcome of this trial. What this means is that anything that was seized after the intrusion into the house is subject to your motion to suppress. The court hasn't heard whatever that evidence may be.

MR. GILMORE: Thank you, Your Honor.

THE COURT: Very well.

(Concluded at 3:50 p.m.)

(9)

No. 05-502

In The Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

v.

CHARLES W. STUART, SHAYNE R. TAYLOR AND SANDRA TAYLOR,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Utah

BRIEF OF *AMICUS CURIAE*, FRATERNAL ORDER OF POLICE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

This case involves the application of the exigent circumstances exception to Fourth Amendment's warrant requirement.

The question presented is whether a police officer's entry into a home was proper pursuant to an exigent circumstances exception, when the officer: has probable cause to believe a crime is being committed; personally witnesses a physical altercation between four (4) adults and one (1) minor inside the home, which altercation occurs at 3:00 o'clock in the morning; personally witnesses the physical assault and injury and of one of the assailants; heard shouts to "Oh Stop!" and "Get off me," when the actions witnessed by the officer occurred inside the home, and were seen through two (2) windows and an open screen door, prior to the officer's entry?

The National Fraternal Order of Police respectfully submits the actions of the officer were reasonable, based on the exigent circumstances exception to the Fourth Amendment's warrant requirement.

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BRIEF OF *AMICUS CURIAE* FRATERNAL ORDER OF POLICE

Now comes the Fraternal Order of Police, on behalf of the more than 322,000 member law enforcement personnel nationwide, by and through undersigned counsel, and hereby respectfully submits its Brief in support of Brigham City, urging reversal of the judgment of the Utah Supreme Court in the above-captioned case.

INTEREST OF *AMICUS*[1]

With this Brief, the National Fraternal Order of Police ("FOP") presents the views of its more than 322,000 law enforcement members and the potential implications for officers, law enforcement and the citizens they protect that will result from the decision rendered by the Utah Supreme Court. This Brief will focus on: (1) exigent circumstances based on probable cause and the strong objective basis to believe that the victim of a physical assault required immediate assistance; (2) the use of this case to establish a workable standard for law enforcement handling exigent circumstances. The FOP adopts and incorporates by reference the Statement and Arguments made within the brief filed on behalf of Petitioners, Brigham City, Utah.

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[1] The submission of this Brief was consented to by all parties hereto.

The office of General Counsel to the National Fraternal Order of Police authored this Brief in its entirety. There are no other entities which made monetary contribution to the preparation or submission of this Brief.

I. INTRODUCTION

A. The National Fraternal Order of Police – More than 322,000 Men and Women of Law Enforcement Urging Reversal of the Decision of the Utah Supreme Court

The National Fraternal Order of Police represents more than 322,000 law enforcement personnel at every level of crime prevention and investigation, nationwide and internationally. Significant confusion with the work of law enforcement personnel, and a threat to the very lives of the people they are sworn "To Protect and Serve," is squarely presented in this case. The decision of the Utah Supreme Court and the application of its rationale in the field will result in jeopardized safety of United States citizens and a lack of uniformity in enforcement for police.

The National Fraternal Order of Police was founded in 1915. What was originally contemplated as an organization for the "social welfare of all the police" has evolved into an active representative group working to protect and secure the laws and work of it's law enforcement members. The work of the FOP's law enforcement members has long been understood as a significant task:

> The duties which the police officer owes to the state are of the most exacting nature. No one is compelled to choose the profession of a police officer, but having chosen it he is obliged to perform those duties, and to live up to the standards of its requirements. * * * The police officer has chosen a profession that he must hold at all peril. He is the outpost of civilization. He cannot depart from

> it until he is relieved. A great and honorable duty is his, to be greatly and honorably fulfilled.[2]

There is no group more qualified to speak to the issues presented in this case than the National FOP. The FOP perspective on this issue is unique, and particularly appropriate to the substantive law enforcement issues raised within this case. Law enforcement personnel nationwide, and at an international level, work every day to promote and ensure the safety of people everywhere. It is America's law enforcement personnel that patrol the streets, protect people and their families, investigate crime, and arrest criminals. As part of these tasks, law enforcement personnel are engaged in many different experiences. They train to handle these experiences and to quickly and effectively assess risks to citizens, while carrying out their law enforcement assignments. So, too are law enforcement personnel called upon to balance constitutional rights with real and potential risks or threat of such risks. The decision of the Utah Supreme Court precludes law enforcement intervention to protect potential victims of violent crime(s) and will thwart each and every law enforcement effort listed above.

It is with these interests in mind that the FOP and its membership respectfully request this honorable Court reverse the decision of the Utah Supreme Court and find the law enforcement actions objectively reasonable in light of the exigent circumstances presented.

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[2] "The Fraternal Order of Police, A History," Justin E. Walsh, Ph.D.; Turner Publishing Co., Ed. 2001, citing Vernon Smith, Fraternal Order of Police Journal, Vol. 47, No. 1 (Winter, 1964), p.19.

B. Key Facts[3]

It was three o'clock in the morning. Having received a call for noise disturbance, Officer Johnson approached the home. Jt. App. 30. "Oh Stop!" "Stop!" The officers heard shouts within the house. *Id.* They next heard "get off me!" Then scuffling and raucous noises were heard from within the house. *Id.* at 28.

On the front porch the officers saw a beer bottle. They proceeded around the side of the house, following the shouts and noises from what appeared to be the rear of the house. *Id.* at 36.

Looking into an open air backyard porch, the officers saw two (2) minors drinking beer. *Id.* at 37. **With probable cause to believe a crime was being committed,** the officers entered the backyard.[4] From the backyard the officers were able to see into the house through two (2) windows and an open screen door to view the following:

- Four (4) adult persons, physically restraining one (1) minor.
- The minor's fists were clenched. He struggled.
- The minor got one hand free. The minor got in a punch to the face of one of the adult assailants.

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[3] All facts are taken directly from the undisputed sworn testimony of Brigham City Officer Jeff Johnson, from the Trial Court's Hearing on Motion to Suppress. The hearing transcript appears in the Joint Appendix 19-95.

[4] The Trial Court found probable cause to believe a crime was being committed (underage drinking). Jt. App. 91-93.

- The dispute seemed to escalate.

Id. at 38-40.

At this point, the Brigham City officers entered the kitchen and announced themselves as police. *Id.* at 40. The officers immediately separated the parties and restrained the minor. *Id.* at 41-42. The officers testified that throughout the incident, obscenities were being used by the parties. *Id.* at 42.

Officer Johnson testified, "there was somebody involved in a fight in that home and we felt like we needed to go in and make sure that somebody wasn't being assaulted, killed, molested, . . . " *Id.* at 36.

The intervention on the part of these officers **was reasonable** in light of the physical violence witnessed and the actual physical injury which occurred to one of the assailants. Moreover, the shouts to "Stop!" and "Get off me!" provide additional objectively reasonable basis to believe that the violent physical contact was unwanted by at least one of the participants to the altercation.

II. ARGUMENTS IN SUPPORT OF PETITIONER

A. This Case Is An Opportunity To Uphold Reasonable Law Enforcement Action and Establish A Workable Standard For Law Enforcement

The Fourth Amendment to the United States Constitution serves to protect citizens from unreasonable searches and seizures. U.S. Const., Amend. IV. See also, *Texas v. Brown*, 460 U.S. 730 (1983). The constitutional standard for law enforcement is a warrant for search and/or arrest, based on probable cause to believe a crime has been committed. *Id.*

This Court has recognized exceptions to the warrant requirement such as the plain view doctrines,[5] the exigent circumstance doctrine,[6] and the warrantless arrest of an individual who commits a misdemeanor in an officer's presence.[7]

At issue in this case, is the Brigham City officer's determination that exigent circumstances existed, so as to enter the home and curtail continued physical violence.

Exigent circumstances are characterized as "circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts." See, *Mincey v. Arizona,* 437 U.S. 385 (1978). See also, *United States v. Place,* 462 U.S. 696 (1983). See also, *Welsh v. Wisconsin*, 466 U.S. 740 (1984).

If any set of facts were able to establish a line between the Fourth Amendment's protections of civil liberties and

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[5] As discussed by this Court in *Illinois v. Andreas*, 436 U.S. 765 (1983), "The plain view doctrine is grounded on the proposition that once police are lawfully in a position to observe an item first hand, its owner may retain incidents of title and possession, but not privacy." *Id.* at 771.

[6] *Illinois v. MacArthur*, 531 U.S. 326 (2001).

[7] *See, Atwater v. City of Lago Vista*, 532 U.S. 318 (2001) Held. The Fourth Amendment does not forbid a warrantless arrest for a minor criminal offense such as seatbelt violation punishable only by a fine. *See also, Maryland v. Joseph Jermaine Pringle*, 540 U.S. 366.

an objectively reasonable basis for law enforcement intervention based on exigent circumstances, this is it.

This case exhibits the appropriate facts to develop a workable standard for law enforcement to use and determine when it is permissible to intervene under the exigent circumstances exception.

In *Illinois v. Andreas*, *supra*, at 772-774, this Court discussed the rationale for "fashioning a standard" for exceptions to the warrant requirement while still being "mindful of three Fourth Amendment principles." As discussed, the standard should be: (1) workable for application by rank and file police officers; (2) reasonable; and (3) objective. *Id.*

Of course, the applicability of this workable standard would necessarily be based on the facts of each case.

This case has physical violence and shouts and cries for help (which indicate noncompliance on the part of a participant). The officers *actually witnessed an assault* between the participants to the altercation, which resulted in *actual physical injury*. These are objective criteria upon which the reasonableness of the officer's actions should be evaluated. *It is unreasonable to suggest that a police officer should not come to the aid of a minor under these circumstances.*

With undisputed probable cause to enter the open air backyard and porch, and an affirmative confirmation that alcohol was involved, the officer's intervention into this altercation at 3:00 a.m., between adults and one minor was reasonable. Furthermore, the police action was limited to only that action which was necessary to "de-escalate" the circumstances.

This is exactly the way reasonable people want police to handle disputes involving physical violence. This case presents the opportunity to draw a definitive and objectively reasonable basis upon which law enforcement will proceed in a warrantless entry. The threat of violence and the actual injury were real.

When considering how and where to draw such lines to create this workable standard for law enforcement, we must look beyond the narrow facts of existing case law and consider the everyday circumstances that law enforcement handles everyday. There is a "gap" between the facts of existing caselaw on this subject. The "gap" is wide and varied in its facts.

Consider everyday altercations, like the one here. Where should law enforcement draw a line of objectively reasonable facts, so as to permit the use of an exigent circumstances exception?

How much fighting is enough?

How much violence is enough to permit law enforcement to intervene without a warrant?

How "escalated" does a situation have to be, in order to find a police officer's intervention reasonable?

What signs should law enforcement wait for prior to entering without a warrant? Should they wait to see a gun? Should they wait to see a baseball bat? Should they wait to see a knife (the altercation in question occurred in the kitchen of the residence)? Should they wait until the weapon is *used*? Should they wait for the multiple assailants or multiple blows between the adults and a minor?

In this case, the officers heard: "Oh Stop!" and "Get off me!" Are shouts and cries enough? Should the police have waited for shrills or other screams? A gunshot? Here, the officers heard thuds and raucous noises coming from the house. Should they have waited for something to break?

We know from case law cited by the Respondents that an attempted suicide is sufficient grounds for warrantless entry. See *Turner v. State*, 645 So.2d 444 (Fla. 1994). We know that a missing home resident is sufficient grounds for warrantless entry. See *United States v. Presler*, 610 F.2d 1206 (4th Cir. 1979). We also know that knowledge of a shotgun wound justifies a warrantless entry. See *United States v. Goldstein*, 456 F.2d 1006 (8th Cir. 1972).

The question remains, what circumstances are enough (shy of an actual gunshot wound or attempted suicide) to form a sufficient basis for warrantless entry? And how, within this "gap" of circumstances, can the workable standard be developed to guide law enforcement?

This case presents the framework for such a standard and good facts to set good precedent. This case has the actual objective criteria, any 1, 2 or 3 of which facts would reasonably lead an officer to believe that exigent circumstances existed.

It is the role of men and women of law enforcement to protect and serve citizens. Who would they be serving by standing idly by while a minor is assaulted by four (4) adults? Who is the court really protecting by upholding a decision which binds officers into a position of having to allow a physical assault to escalate, and until what point? Where is the manual describing an average domestic physical assault?

The answer to each of these questions is *none*. No one is protected, no one is served, and no two incidents of domestic violence are exactly the same. With overwhelming statistics as to the number and scale of violence involved with domestic violence abuse, the role of police officers is critical.

The undisputed testimony offered by Brigham City Officer Johnson illustrates the range of actual circumstances that occur on any given day in law enforcement. Specifically, Officer Johnson testified he was not sure if the minor was being *assaulted, molested* or *raped*. See Jt. App. at 36.

We look to the judicial system, as arbiters of these cases, to balance the interests and draw lines. The Utah Supreme Court has drawn a line that would chill officers' responses to crisis and/or the need for emergency aid.

This case presents an opportunity, with simple facts and objective criteria, to draw a line that would aid law enforcement and protect citizens.

B. The Statistics and Level of Brutality Among Domestic Violence Crimes Requiring Police Intervention.

Unfortunately, in today's day and age, most people do not consider the everyday risks to minors until they see it on an NBC Dateline television program which airs to expose such risks. We do not always hear about everyday violence unless an assailant flees the country after his wife and young child are found dead. As a society are we willing to wait to the point where intervention is not even possible?

The men and women of law enforcement are on the front lines of these disputes. They see, first hand, the disputes behind the statistics. They investigate the altercations that escalate into physical violence and injury.

We know from overwhelming statistics that domestic violence is a growing problem in America:

(1) Every state allows its police to arrest perpetrators of misdemeanor domestic violence incidents upon probable cause, and more than half of the states and the District of Columbia have laws requiring police to arrest on probable cause for at least some domestic violence crimes.[8]

(2) Less than one-seventh of all domestic assaults come to the attention of the police.[9]

(3) Female victims of domestic violence are 6 times less likely to report crime to law enforcement as female victims of stranger violence.[10]

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[8] Zorza, *Mandatory Arrest for Domestic Violence: Why it may prove the best first step in curbing repeat abuse*, Criminal Justice, Vol. 10, No. 3, p.66 (Fall 1995), as stated in American Bar Association Commission on Domestic Violence Statistics, http //www.abanet.org/domviol/stats.html

[9] Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.3, as stated in American Bar Association Commission on Domestic Violence Statistics, http://www.abanet.org/domviol/stats.html.

[10] American Psychl. Ass'n Violence and the Family: *Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996), p.10, as stated in American Bar Association Commission on Domestic Violence Statistics, http://www.abanet.org/domviol/stats html.

(4) In 1994, 38% of domestic homicides were multiple-victim, usually combining a spouse homicide and suicide, or child homicide.[11]

(5) Where there are multiple victims in a domestic homicide, 89% of perpetrators are male.[12]

These statistics affirm the objective basis for law enforcement to take these circumstances seriously. They affirm the potential risks that law enforcement officers must discern and handle on a daily basis.

C. Case Law With Regard to Warrantless Search and Seizures Supports These Officers.

The National FOP urges this Honourable Court to consider the context of this case with other Fourth Amendment precedent, and reconcile the purpose and standards for use by law enforcement. If an officer can make warrantless arrest for misdemeanors pursuant to *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), and search/seize items in plain view pursuant to *Illinois v. Andreas*, 436 U.S. 765 (1983), how can it logically be said, in this case, that an officer can have probable cause, personally witness an assault of a minor through open windows and doors,

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[11] Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p 45, table 12, as stated in American Bar Association Commission on Domestic Violence Statistics, http://www.abanet.org/domviol/stats.html.

[12] Florida Governor's Task Force on Domestic and Sexual Violence, Florida Mortality Review Project, 1997, p.52, table 29, as stated in American Bar Association Commission on Domestic Violence Statistics, http://www.abanet.org/domviol/stats.html.

personally witness actual injury, and yet no exigent circumstances exist?

D. The Decision of the Utah Supreme Court Set a Dangerous Precedent for Law Enforcement and the Citizens They Serve to Protect.

It defies common sense to understand why the Utah Supreme Court has ruled against law enforcement and the protection of citizens. Certainly such a position is contrary to our public conscience. Should we really allow four (4) adults to assault one (1) minor, at 3:00 o'clock in the morning, when alcohol and underage drinking is present? Should we tell officers who witnessed the alcohol and 3:00 a.m. assault to merely stand by and "see if the circumstances escalate further"?

The Utah Supreme Court's decision was unbalanced. The Utah Supreme Court immediately took the position that a firm line was drawn "at the entrance to the house." *Brigham City v. Stuart, et al.*, 122 P.3d 506, 511 (2005), citing *Kyllo v. U.S.*, 533 U.S. 27 (2001). Citing *Payton v. New York*, the Utah Supreme Court then noted that an officer "who barely cracks open the front door and sees nothing" is deemed to have violated the Fourth Amendment. *Id.* at 511, citing *Payton v. New York*, 445 U.S. 573 (1980). The Utah Supreme Court went further to narrowly describe exigent circumstances in terms of assessing only "the needs of law enforcement" rather than the actual circumstances that require officer aid. *Id.* at 511 citing *Mincey, supra* at 394.

This analysis by the Utah Supreme Court is without balance and renders the "test" for exigent circumstances

meaningless. The Utah Supreme Court chose to narrowly focus on "law enforcement needs" rather than the emergency circumstances that existed for the potential victim(s). This is not a law enforcement driven item, this is about protecting the citizens in need. That balancing of interests was not properly or fairly conducted by the Utah Courts.

As stated above, this case does not present the intricacies or details of a long standing law enforcement investigation into an alleged crime. There is no interest of law enforcement to arrest or seize anyone in the home. Rather, the interest of law enforcement here was merely to aid the participants to the altercation and de-escalate the circumstance. This case presents facts which are more common and more clear as to specific details available to law enforcement in practical application.

The minor in this case needed assistance. A physical altercation ensued. Those are the driving facts behind the acts of law enforcement in this case. *This was the proper action for law enforcement in addressing such disputes.*

The Utah Supreme Court decision seems to exist *in absentia* of everyday brutalities of domestic violence. The decision is focused on the misguided premise that it was law enforcement who needed to enter the house, when in fact it was the victims who needed law enforcement assistance. Taken to the extreme, the Utah Supreme Court's decision may preclude law enforcement from intervening on a potential rape or molestation of a minor by an adult (as was possible in this case).

In a similar manner, the Petitioner draws a line that places potential victims at greater risk before law enforcement can intervene to assist them.

Today, gangs and senseless violence are more the norm, than the extreme. The Respondents' suggested "boundaries" for law enforcement intervention place more people directly at risk. The Respondents cite *Turner, supra, Presler, supra* and *Goldstein, supra*, to set the bar at law enforcement intervention at suicide and actual gunshot wounds. The Respondent's premise that a victim must be missing or suffering a known gunshot to require police assistance is contrary to the current and everyday dangers that citizens face and which citizens expect for police assistance.

The Respondents' position falls short of addressing the everyday circumstances faced by law enforcement officers when protecting citizens. Their position fails to address the "gap" of circumstances between actual gunshot wounds and a common physical assault. Moreover, the position is tenuous and difficult to defend for a law enforcement officer who sits idly by. The Respondents suggest that courts should allow the law to be stretched to its logical and/or legal extreme. Such a position does not adequately protect victims and further, does not establish a uniform and rational basis for law enforcement to carry out their duties.

CONCLUSION

This Brief In Support is intended to provide the Court with the practical context and consequences of the Utah Supreme Court's decision and finding of no exigent circumstances, the result of which will have a significant impact on the work and efforts of law enforcement personnel to protect our citizens.

This case presents simple undisputed facts, and an opportunity for the Court to establish a reasonable standard/basis for law enforcement to protect citizens where probable cause exists, and plain view of misdemeanor assaults, with actual physical violence and injury resulting.

Based on the foregoing, the National Fraternal Order of Police respectfully requests this Court reverse the Utah Supreme Court, and find that exigent circumstances did exist as did an objective reasonable basis, so as to uphold the officer's entry into the residence, in this matter.

Respectfully submitted,

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(5)

No. 05-502

In the Supreme Court of the United States

BRIGHAM CITY,
Petitioner,

v.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR
Respondents.

On Writ Of Certiorari To The Utah Supreme Court

BRIEF SUPPORTING PETITIONER OF AMICI CURIAE STATES OF MICHIGAN, COLORADO, DELAWARE, HAWAII, ILLINOIS, IOWA, KANSAS, MARYLAND, MONTANA, NEBRASKA, NORTH DAKOTA, OREGON, PENNSYLVANIA, VERMONT, WASHINGTON, WYOMING; SCOTT COUNTY, MINNESOTA, AND WAYNE COUNTY, MICHIGAN.

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STATEMENT OF THE QUESTION

From outside a home at 3:00 a.m., officers witnessed a tumultuous struggle between four adults and a juvenile. Upon seeing the juvenile punch one of the adults in the face, the officers entered the home to quell the violence. The questions presented are:

1. Does the "emergency aid exception" to the warrant requirement recognized in *Mincey v. Arizona*, 437 U.S. 385 (1978) turn on an officer's subjective motivation for entering the home?

2. Was the gravity of the "emergency" or "exigency" sufficient to justify, under the Fourth Amendment, the officers' entry into the home to stop the fight?

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STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

The amici adopt the factual statement presented by the Petitioner.

INTEREST OF THE AMICI

Amici states and counties have a substantial interest in ensuring consistent application of the Fourth Amendment. The issue presented here presents a common fact pattern and a vexing issue on which jurisdictions in the country are not consistent. Amici states believe that the opinion and judgment at issue reaches the wrong conclusion on the issue presented, one that is deleterious to police exercise of their community-caretaking function, and ultimately dangerous to the public. The police need guidance as to how to act when confronted with situations where injury is threatened, and the public needs protection in these situations as well. Amici believe that the entry of the police here to quell the violence occurring before their eyes and to prevent injury before it occurred was entirely reasonable under the Fourth Amendment. The Fourth Amendment should not prevent officers from taking reasonable action in protecting the public from harm before it occurs, just as it should not disallow them from investigating when there are grounds to believe an injury as already occurred so as to provide aid.

SUMMARY OF ARGUMENT

There are two separate doctrines concerning "exigent" situations that permit entry into premises without a warrant. One, a part of the community-caretaking function of the police, is best known as "emergency circumstances," and allows the police to enter on a basis of proof akin to reasonable suspicion to provide aid to someone injured, or to prevent or avoid injury to person or property. Because not directed at the discovery and seizure of criminal evidence or contraband, this entry and search falls within

the Reasonableness Clause and without the Warrant Clause of the Fourth Amendment. Whether police conduct is justified in a particular case turns not on the subjective motivation or hopes and desires of the officers, but the objective facts. If the objective facts give rise to cause to believe a person inside is in need of immediate aid, or that entry is necessary to prevent or avoid injury to persons or property, the entry is valid even if the police have additional subjective motives for entry. Here, the police entered to quell a disturbance and avoid injury. The notion that they may have had a "law-enforcement" interest here as well is both peculiar on the facts, and irrelevant to the validity of the entry.

Exigent circumstances also justify entry into premises when there is probable cause to enter for a law-enforcement purpose but to await a warrant will either cause the loss of evidence sought or injury to persons or property. Here, an assault occurred before the very eyes of the police. Entry to end the assault, even if viewed as a law-enforcement purpose, was justified as the assault occurred before their eyes and the struggle was ongoing. The police need not wait until injury has occurred before acting to avoid injury. The entry here was entirely proper; in fact, it was sound police work, of the sort which ought to be encouraged, not prevented.

ARGUMENT

I. Introduction

A. The Factual Pattern Involved

Put simply, the police here, answering a disturbance call, observed a physical altercation occurring right before their eyes. They made this observation from outside the premises—and there is no question that they were properly in a position to make it—and the altercation was occurring just inside the premises. Several individuals appeared to be attempting to restrain another, and that individual broke free and landed a punch to the face of one those seeking to restrain him. At that point, the officers had no way of knowing whether the individual who landed the punch was a criminal—perhaps even an intruder—who the others were attempting to restrain, or was himself a victim of intruders. Or the altercation may have been a mutual affray.

This incident is representative of a category of situations to which the police must respond—police responding to disturbance calls regularly confront incidents of violence ongoing in the premises, and must make a quick decision whether to enter to quell the disturbance before it escalates and risks serious injury to those involved or the officers themselves, or, if the law so commands, do nothing if serious or aggravated injury has not *yet* occurred or is not being threatened at that very moment.

The state decisions in this case command the police to, in effect, take the most passive approach possible under the circumstances, attempting to signal their presence in some way while remaining outside (even if unlikely to be noticed given the nature of the ongoing event). Rather than entering immediately to avoid escalation of the events and serious harm, they are to hold their ground outside the premises unless and until serious bodily injury that might be prevented by immediate entry actually occurs (or perhaps is threatened by the use of a deadly weapon). The requirement of the Fourth Amendment that all searches and

seizures be "reasonable" does not compel this result, and this Court ought to so say.

B. The Framework for Analysis

(1) Entries into premises not solely directed at the seizure of persons or things are governed by the Reasonableness Clause, not the Warrant Clause

The current controlling view of the Fourth Amendment is that warrantless searches are "per se unreasonable," unless falling into one of several recognized "exceptions" to the warrant requirement.[1] This view does not have unanimous support; some members of the Court have argued that the "preference" for a warrant is a "judicially created" rule, there being "nothing in the Fourth Amendment itself [requiring] that searches be conducted pursuant to warrants."[2] Justice Black stated that "the Fourth Amendment does not require that every search be made pursuant to a warrant. It prohibits only '*unreasonable* searches and seizures.' The relevant test is not the reasonableness of the opportunity to procure a warrant, but the reasonableness of the seizure under all the circumstances."[3] And Justice Stevens has also urged the construction that "[t]he Fourth Amendment contains two separate Clauses, each flatly prohibiting a category of governmental conduct. . . . [T]he ultimate question is whether the category of warrantless searches [in question] is 'unreasonable' within the meaning of the first Clause."[4]

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[1] See e.g. Whitebread, *Criminal Procedure*, sec.4.03(c), at p.108, positing that there are precisely six warrant exceptions.

[2] *Robbins v. California*, 453 U.S. 420, 438 (1981) (Rehnquist, J., dissenting).

[3] *Coolidge v. New Hampshire*, 403 U.S. 443, 509 (1971) (Black, J., concurring and dissenting, emphasis added).

[4] *Marshall v. Barlows*, 436 U.S. 307, 325-326 (1978) (Stevens, J., dissenting, footnote omitted). See also Telford Taylor, *Two Studies In Constitutional Interpretation*, p. 46-47 (1969).

A "warrant preference/exceptions" theory of the Fourth Amendment fails to explain coherently why some searches may be accomplished without warrant, and is inadequate to do so. But there *is* a coherent approach to application of the Warrant Clause, one based on the text of the Fourth Amendment, as well as its history.[5] The Warrant Clause itself provides much of the answer,[6] for a warrant may only be obtained on a demonstration of "probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Toward what kinds or types of searches is the Warrant Clause aimed? Those which have as their purpose the *discovery* and *seizure* of fruits, instrumentalities, contraband, evidence, or people, for that sought "to be seized" must be particularly described *in advance* to the magistrate—its presence in the location to be searched must thus be anticipatable, and this shown by evidence giving rise to probable cause.[7] The logical inference drawable from the probable cause and particularity requirements is that a warrant is required for all searches the purpose of which is to discover and seize physical items or persons, unless necessity (exigent circumstances) justifies search without warrant.[8]

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[5] And indeed, this Court took precisely this approach—looking to textual clues, and considering the harm or evil at which the provision was aimed—in construing the Confrontation Clause in *Crawford v. Washington*, 541 U.S. 36 (2004) where the text involved—"witnesses against"—presented far less to work with than does the Fourth Amendment.

[6] Bartee, "The Fourth Amendment: An Immodest Proposal," 11 Am. J. Crim. Law 293, 298 (1983).

[7] Professor Grano argues cogently in Grano, "Rethinking the Fourth Amendment Warrant Requirement," 19 Am. Crim. L. Rev. 603 (1982) that history in fact supports a warrant preference, forgiven only by exigency. But Professor Grano carefully limits his analysis to the "more traditional searches for criminal evidence, searches subject to the usual probable cause requirement." 19 Am. Crim L. Rev. at 605, fn 10. That searches for other purposes are in fact outside the Warrant Clause is fully consistent with Professor Grano's thesis.

[8] Bartee, 11 Am. J. Crim. Law at 299-301; 309-312.

The Warrant Clause thus applies to searches which are directed toward the discovery and seizure of particularly described things, and not to searches that have a different purpose; these are governed by the Reasonableness Clause. A search which is not seizure-directed cannot be within the Warrant Clause because there are no items to be seized which can be described in advance with particularity, and there can be no probable cause to find items which are not being sought in the first place.

The point is also made by history. The Framers' concern was with searches which were aimed at the discovery and seizure of things, searches which should require a specific warrant (and not a general warrant, or writ of assistance), and probable cause to believe the items will be found in the place to be searched.[9] Though it may well be that the Framers' and ratifiers' concern was not with warrantless searches simply because they did not occur, searches requiring some authorization, again this historical point refers only to searches for criminal evidence.[10] Warrantless searches for other purposes were well-established at the time of the ratification of the Fourth Amendment.[11] And, of course, the modern police department was not established at the time of the Framing and ratification; the role of police officers as

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[9] See Grano, 19 Am. Crim. L. Rev. at 617-621.

[10] Grano, 19 Am. Crim. L. Rev. at 617.

[11] See e.g. *Frank v. Maryland*, 359 U.S. 360 (1959). While it is true that the Court has required "inspection warrants" in circumstances where traditional probable cause does not exist and cannot be shown, *Camara v. Municipal Court*, 387 U.S. 523 (1967); *See v. Seattle*, 387 U.S. 541 (1967), in a number of other situations warrantless inspections remain permissible. See e.g. *South Dakota v. Opperman*, 428 U.S. 364 (1975); *United States v. Biswell*, 406 U.S. 311 (1972); *Donovan v. Dewey*, 452 U.S. 594 (1981); *Michigan v. Tyler*, 436 U.S. 499 (1978). And in an appropriate case amicus submits that the Court might well reconsider the views of Justice Stevens concerning those cases requiring "search warrants" though traditional probable cause is neither present nor appropriate as a justification for the entry.

"community caretakers" in a variety of situations has developed more fully through time. It must be born in mind that the Constitution "supports not only what its text requires but also much that it merely suggests or allows." The conduct of government agents need not be shown to have a historical counterpart at the time of the Framing in order to be constitutional; rather, the conduct in question simply cannot be consistent with actions that were *prohibited* at that time either expressly or by way of analogy.[12]

An acceptance of the theory that the Warrant Clause, by its textual relation to both probable cause and particularity requirements, and by its history, is aimed at seizure-directed searches, so that a warrant is required for all seizure-directed searches unless emergency circumstances require quick action, would supply the rationale for when the Warrant Clause applies and when it does not. And the entry into premises accomplished in the present case for purposes other than the seizure of items—to quell a disturbance and avoid physical injury to persons—is without the Warrant Clause rather than within some exception to it, and governed by the requirement of reasonableness—which it surely was.

(2) The emergency-circumstances doctrine is distinct from exigent circumstances, either as a discrete category of exigent circumstances or an independent doctrine.

The entry of the police here was justified both by the doctrine of "emergency circumstances" as part of the community-caretaking function of the police, and also exigent circumstances as part of the law-enforcement responsibilities of the police (it is quite possible for the objective facts to justify an entry *both* to protect occupants of the premises against injury as well as to pursue law-enforcement objectives). Whether emergency

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[12] Keith Whittington, *Constitutional Interpretation: Textual Meaning, Original Intent, and Judicial Review* (1999), p. 172, 211.

circumstances is viewed as independent from exigent circumstances, or as a sub-category of that doctrine, the two principles are distinguishable, and for the sake of accurate discussion and avoidance of confusion should be referred to separately, though they may both be applicable to a particular factual situation, as here.[13] The "exigent circumstances" exception to the warrant requirement concerns the actions of the police in their law-enforcement capacity. Evidence or persons are sought, and entry or search is permitted without warrant because a failure to so allow could result in the loss of the evidence or items sought. Probable cause is thus required in these circumstances.[14]

"Emergency circumstances" involve the community-caretaking function of the police, where entry into premises occurs not to seize evidence or persons to build a case, but to determine whether someone on the premises is in need of aid, to provide aid to someone injured, or to avoid injury to persons or property. These entries are without the Warrant Clause, governed by reasonableness, and a standard akin to reasonable suspicion is applied.

II. The Test For Reasonableness For An Emergency Circumstances Entry Is Wholly An Objective One, And The Police May Enter If It Is Objectively Reasonable To Do So To Prevent Injury To Person(S) From Occurring.

A. "Subjective" Motivations Play No Part in the Inquiry

This Court has granted certiorari to settle the disagreement among jurisdictions regarding the "elements" of the emergency-

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[13] See e.g. John Decker, "Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions," 89 J. Crim. L. & Criminology 433 (1999); Timothy Baughman, *Michigan Criminal Law and Procedure: Search and Seizure* (2d ed.), § 4.40.

[14] See e.g. *United States v. Baskin*, 424 F.3d 1, 2 (CA 1, 2005).

circumstances doctrine. That the doctrine exists has been affirmed by this Court:

> We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. . . . "The need to protect or preserve life or *avoid serious injury* is justification for what would be otherwise illegal absent an exigency or emergency."[15]

This Court in *Mincey* did not limit the emergency-circumstances doctrine to situations where it is reasonable to believe that a person inside the premises is in need of immediate aid—although that is certainly one circumstance justifying immediate entry—but also referred to the avoidance of injury. An entry without warrant is constitutionally reasonable as part of the community-caretaking function of the police where it is reasonable to believe, based on the objective facts, that a person inside is either in need of immediate aid or entry is necessary to *prevent or avoid* serious injury.

That the community-caretaker function of the police allows entry without warrant in some circumstances is not a matter of controversy; jurisdictions are divided as to whether the question is approached by assessing the objective facts or whether the subjective motivations of the entering officers also play a determinative role. The Utah Supreme Court came down on the

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[15] *Mincey v. Arizona*, 437 U.S. 385, 392-393 (1978)(internal footnotes and citations omitted; emphasis supplied). And see further such cases as *United States v. Barone*, 330 F.2d 543 (1964); *State v. Boggess*, 340 N.W.2d 516, 522 (Wis, 1983)(noting the need of the police to make a "prompt assessment of sometimes ambiguous information concerning potentially serious consequences").

side of the division that requires that the subjective motivation for the entry may not be "primarily" to make an arrest or find evidence, and found—though amicus finds the conclusion rather remarkable—that because no medical aid was rendered by the officers who entered, the "subjective motivations test" was not met (the court at least implicitly endorsing the notion that an entry to *prevent or avoid* serious injury does not fall within the emergency circumstances exception, which is inconsistent with this Court's observation in *Mincey*).

This Court has in other contexts set its face against "subjective motivations" tests, and should do so here as well. Not only was such a test rejected in *Whren v. United States*,[16] the Court holding that the validity of a Fourth Amendment seizure turns on the objective facts, and does not become "unreasonable" if the police involved have a subjective hope or desire that the seizure will lead to the discovery of evidence or contraband, but that rejection was reaffirmed only last term in *Devenpeck v. Alford*.[17] The Ninth Circuit held that an arrest is not valid under the Fourth Amendment when the criminal offense for which there is probable cause to arrest under the facts known to the officers is not "closely related" to the offense *stated* by the arresting officer at the time of arrest. This Court unanimously rejected this subjective test *precisely* because the rule stated by the Ninth Circuit made "the lawfulness of an arrest turn upon the motivation of the arresting officer. . . . This means that the constitutionality of an arrest under a given set of known facts will 'vary from place to place and from time to time,' . . . depending on whether the arresting officer states the reason for the detention and, if so, whether he correctly identifies a general class of offense for which probable cause exists. An arrest made by a knowledgeable, veteran officer would be valid, whereas an arrest made by a rookie *in precisely the same circumstances* would not. We see no reason to ascribe to the Fourth Amendment such

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[16] *Whren v. United States*, 517 U.S. 806 (1996).

[17] *Devenpeck v. Alford*, 543 U.S. 146 (2004).

arbitrarily variable protection."[18] The same is true here; this Court needs to make plain that the validity of an emergency circumstances entry turns on whether, under the objective facts, it is reasonable to conclude that a person inside is in need of immediate aid or that entry is required to *prevent* serious injury from occurring. And when an immediate entry may prevent serious injury from occurring, the fact that medical attention has not yet become necessary does not impugn even the subjective motivations of the entering officers.

Petitioner has well treated the various cases regarding the matter, and the amicus will not recover that ground. But one commentator has suggested that

> [t]he officer should be motivated by a good faith desire to aid a person in need, prevent harm, or to protect significant property interests.
>
> * * *
>
> While it is unnecessary that this community caretaking motive be the only motive in an officer's mind at the time of the warrantless entry, it is essential that the desire to aid or protect be a primary, or at least a substantial, part of the officer's good faith subjective motivation. It is quite conceivable that an officer engaging in a warrantless search may simultaneously have dual motives for his or her actions, but as long as one of these motives corresponds with an objectively reasonable emergency, as defined in the first prong, then the emergency doctrine is applicable.

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[18] *Devenpeck*, 543 U.S. at 154 (citations omitted, emphasis original). And see *Scott v. United States*, 436 U.S. 128, 138 (1978) ("... the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action").

* * *

> The officer needs to be actually engaged in community caretaking, not merely using an emergency situation as a pretext for other motives.[19]

The commentator thus takes to task the Iowa Supreme Court for "disregard[ing]" this "central component of the emergency doctrine" by announcing that it would "no longer apply the motivation prong in emergency doctrine analysis."[20]

In the Iowa case[21] the police received a missing person report from the daughter of one Rita Young, who had been living with the defendant. The daughter told the police she spoke twice a day with her mother, but had not heard from her for several days, and was concerned because defendant had been abusive to her in the past. Further, Carlson had given her conflicting information about her mother's whereabouts, and when, in an attempt to gain entrance to the house to look for her mother, the daughter had called ahead to defendant and asked to borrow a certain dish, on her arrival the door had been locked, the lights were on, the garage door was up, and the car was gone, "indicating [Carlson] had left hurriedly."

The officers decided, then, to check on the mother, and proceeded to defendant's house, where the saw a person watching television in an upstairs room, but received no answer to knocks on the various doors of the house or to telephone calls to the residence. The officers learned the structure was a duplex, and the person upstairs was a tenant; he reported he had not seen the mother, and that the defendant was probably asleep in his own apartment. A forced entry was made, defendant found asleep,

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[19] Decker, 89 J. Crim. L. & Criminology at fn 13, p. 510-511, 512.

[20] Decker, 89 J. Crim. L. & Criminology at 512.

[21] *State v. Carlson*, 548 N.W.2d 138 (Iowa, 1996).

and the body of the mother, bound and beaten, found in the basement.

Noting that it had previously adopted the "emergency aid"/community caretaker doctrine, allowing warrantless entries to render aid or assistance, and that it had held that an "actual" or "subjective" motivation was required under the doctrine, the Iowa Supreme Court abrogated the subjective requirement, pointing to the objective test in claims of "pretext" arrests. Prescient of this Court's remarks in *Devenpeck*, the court observed that "the officers' subjective thinking processes shed little light on the reasonableness of the intrusion. . . . [R]easonableness should be tested . . . only on the basis of the objective circumstances."[22] The court was correct; if the invasion of privacy was justifiable based on the objective facts, the entry is reasonableness without regard to what motivation was in the officer's heads.

The motivations of the police cannot control the constitutional question here, but this is not to say that they play no role. Assuming objective facts justifying the entry, the subjective motivations play no role, and thus play no role in appellate review. But a factfinder, of course, is free to consider motivation in determining credibility. What is actually at issue when terms such as "good faith" or "pretext" are employed is whether the articulated objective basis for the police actually exists. If, for example, an officer enters premises because, he testifies, he heard screams, and no other person heard those screams, though others were in a position to do so, and it is revealed the officer also had a subjective investigative motive for entry, then as a matter of credibility it may be found by the judge hearing the evidence that the objective basis for the entry simply does not exist—that there were no screams. But if in fact there were screams coming from a house that an officer longed to enter to investigate for narcotics activity, this subjective motivation would not defeat the reasonableness of the entry under the emergency-aid doctrine.

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[22] *Carlson*, 548 N.W.2d at 141-142.

B. Entry May Occur to Prevent Injury, Not Simply to Provide Aid or Treatment to An Injury That Has Already Occurred

Petitioner has also well noted the split of opinion in various jurisdictions regarding the gravity of the exigency required before the exigent circumstances doctrine may be applied, a point also applicable to emergency circumstances. The Utah Supreme Court found the doctrine inapplicable because serious bodily injury had not *yet* occurred. But the *avoidance* of great bodily harm is a permissible purpose of immediate entry, and officers must make an immediate on-the-spot assessment, which should not lightly be second-guessed.[23] That delay when faced with an altercation of the sort involved here might result in occurrence of a serious injury that could have been avoided by immediate action renders the action of the police in entering entirely reasonable. It is *un*reasonable to require that the police wait to enter until serious bodily injury has occurred or a deadly weapon is employed.

III. Where From Outside Premises Police Observe Acts Of Physical Violence Occurring Inside The Premises Immediate Entry By The Police Is Justified By The Doctrine Of Exigent Circumstances, As Part Of The Law-Enforcement Function Of The Police.

The entry here was justified not only pursuant to the community-caretaking function of the police, but also under the exigent circumstances doctrine where the police are acting in their investigative capacity—and where harm to an individual is occurring or about to occur the two doctrines often intertwine.

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[23] Where . . . the police are called upon to respond to a crime reported to be in progress, . . . the police judgments [concerning entry of the premises] should be afforded an extra degree of deference. *Reardon v. Wroan*, 811 F.2d 1025, 1029 (CA 7, 1987).

The level of information necessary for the police to enter premises under the emergency circumstances doctrine is akin to reasonable suspicion.[24] But where entry is justified by exigent circumstances in the exercise of the law-enforcement function of the police, probable cause that a crime has been committed is required.[25] Some courts, including the Utah Supreme Court here, take the view that exigent circumstances cannot justify entry to preserve evidence of a "minor" offense or to arrest for a minor offense, often citing *Welsh v. Wisconsin*.[26] But that case does not require that result.

Welsh did not involve entry where there was probable cause to believe a crime was occurring before the very eyes of the police officers on the scene, but rather an entry to preserve evidence—blood-alcohol content—that would dissipate with time and thus be unavailable if delay occurred. An exigent circumstances entry requires probable cause that a crime was committed and reason to believe that evidence will be destroyed or lost if in entry is delayed to obtain a warrant, *where preservation of evidence is the purpose of the entry.* In *Welsh* this Court held that where the offense is a minor one (and it must be born in mind that the statute there provided that a first offense was a noncriminal violation subject to a civil forfeiture proceeding for a maximum fine of $200), the "preservation of evidence" component of exigent circumstances will not justify a warrantless entry.

But preservation of evidence is not the *only* justification for an exigent circumstances entry—that entry may also be justified, as with emergency circumstances, to prevent injury to a person or persons (generally involved with an ongoing crime) or even injury to property (also generally involved with an ongoing crime). Unlike evidence gathering, where the purpose of an entry

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[24] See e.g. *People v. Davis*, 442 Mich. 1, 20; 497 N.W.2d 910 (1993).

[25] See e.g. *United States v. Baskin*, 424 F.3d 1, 2 (CA 1, 2005).

[26] *Welsh v. Wisconsin*, 466 U.S. 740 (1984).

based on probable cause to believe that a crime has been committed is to prevent injury or damage to property, the entry is justifiable without regard to the seriousness of the offense. As one court—which does not stand alone—has said, "[i]t would have been wholly unreasonable [for the police] to stand idle, watching further damage being done to cars which were almost certainly stolen, while a warrant was obtained. . . . [T]hey had a duty to preserve and protect the property of the owners, and . . . exigent circumstances justified their entry into the garage."[27] Amicus submits that where probable cause exists—and it existed here—that which drives the permissibility of the entry may be the seriousness (or lack of seriousness) of the offense *only* when preservation of evidence is the goal. But seriousness of the offense is not relevant when the goal of the police—as with emergency circumstances—is to prevent or avoid injury (or further injury) to either property or persons. That an assaultive offense is occurring before the eyes of the officers should, *by definition*, permit the entry of the officers into the premises on this basis under exigent circumstances, as well as emergency circumstances.

Police who arrive at premises in response to disturbance calls and, from without the premises, see or hear evidence of violence occurring within the premises, must make an immediate judgment as to how to respond. A judgment to enter to should be afforded particular deference. The community-caretaking function of the police permits the police to enter if it is reasonable to believe that someone inside is in need of immediate aid, or that entry will avoid either injury or further injury. For this entry to be reasonable under the Fourth Amendment the question is what the objective facts reveal, not the arguable subjective motivations of the officers; further, that serious injury has not yet occurred does not render an entry unreasonable when an assault is ongoing at the time of the officers arrival, when prompt action may *prevent* escalation of the situation and serious injury.

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[27] *United States v. Connor*, 478 F.2d 1320, 1324 (CA 7, 1973).

Exigent circumstances concerns an entry into premises without warrant when the police are exercising their law-enforcement function. There must be probable cause to believe a crime has or is occurring, and it must be reasonable to believe that delaying entry until a warrant is obtained will result in the loss of evidence or injury to persons. Where the concern is preservation of evidence, an entry is not reasonable where the offense is a very minor one (perhaps simply a civil infraction). But the seriousness of the offense should not be of concern when the purpose of the entry is to avoid or prevent injury to persons or property.

CONCLUSION

Wherefore, amicus submits that the Utah Supreme Court should be reversed.

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IN THE

Supreme Court of the United States

BRIGHAM CITY, UTAH,
Petitioner,

v.

CHARLES W. STUART, ET AL.,
Respondents.

On Writ of Certiorari to the Supreme Court of Utah

BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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BRIEF OF THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

This brief is submitted on behalf of the National Association of Criminal Defense Lawyers as amicus curiae in support of respondents.[1]

INTEREST OF AMICUS CURIAE

The National Association of Criminal Defense Lawyers ("NACDL") is a non-profit organization with direct national membership of over 10,000 attorneys, in addition to more than 28,000 affiliate members from every state. Founded in 1958, NACDL is the only professional bar association that represents public and private criminal defense lawyers at the national level. The American Bar Association recognizes NACDL as an affiliated organization with full representation in the ABA House of Delegates.

NACDL's mission is to ensure justice and due process for the accused; to foster the integrity, independence, and expertise of the criminal defense profession; and to promote the proper and fair administration of criminal justice, including the protection of Fourth Amendment liberties. NACDL has frequently filed *amicus curiae* briefs in this Court in cases implicating its substantial interest in safeguarding the individual liberties guaranteed by the Fourth Amendment. *See, e.g.*, *Kyllo v. United States*, 533 U.S. 27 (2001); *Bond v. United States*, 529 U.S. 334 (2000); *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000).

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[1] Pursuant to Rule 37, letters of consent from the parties have been filed with the Clerk of the Court. No counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus*, its members, or its counsel contributed monetarily to the brief.

SUMMARY OF ARGUMENT

It is axiomatic that the protections of the Fourth Amendment are never more robust than when the government seeks to cross the threshold of the home. Accordingly, any nonconsensual home entry effectuated without a warrant is presumptively unreasonable and in violation of the Fourth Amendment. Neither of the only exceptions to that rule put at issue in this case – the emergency aid exception and the exigent circumstances exception – applies, and the police entry of respondent's home is therefore unconstitutional.

I. The emergency aid exception – which allows officers to enter a home without probable cause or any individualized suspicion of criminal wrongdoing in order to administer emergency medical assistance – does not apply because the officers in this case were acting in their traditional law-enforcement capacity. Petitioner and its *amici* argue that whether the officers' entry was effectuated for law-enforcement or non-law-enforcement purposes is irrelevant under the Fourth Amendment. But this Court always has insisted that any search – let alone a home entry – not supported by individualized suspicion of criminal activity may be sustained only when it is undertaken to advance a "special need" apart from law enforcement. As the Court's cases make clear, inquiry into the primary purpose of such "special needs" searches is both appropriate and necessary, as a condition of dispensing with the normal requirement of probable cause or individualized suspicion.

II. In any event, as three Utah courts properly found, the objective record facts in this case did not justify an entry under either the emergency aid or exigent circumstances exception. As to exigent circumstances, those courts held, the warrantless entry was unjustified because the nature of the incident did not demand immediate police entry. Petitioner now seeks to lower the bar, proposing a novel bright-line rule that exigent circumstances arise whenever there is a

physical altercation of any kind – a rule that would work an unprecedented expansion of the exigent circumstances exception. The proper analysis, consistent with this Court's precedents, requires consideration of the totality of the circumstances, including not only the seriousness of the incident but also the need for immediate police intervention. On the facts of this case, the police entry was premature: there was nothing to prevent the officers from maintaining their surveillance and waiting to see whether a serious threat of physical injury would in fact materialize. A warrantless home entry must be a last, and not a first, resort. By the same token, as the three State courts held, the objective facts of the case did not give rise to a reasonable belief that any occupant of the home was in need of emergency medical assistance from the police. A "smack" to the nose is unlikely to give rise to any need for medical treatment – let alone a need that could not be met here by the recipient of the smack himself, or by others in the home, so that immediate *police* assistance was required.

ARGUMENT

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures," and provides that "no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV. "At the very core" of the Amendment "'stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)); *see also Georgia v. Randolph*, 547 U.S. _, No. 04-1067, slip op. at 10 (Mar. 22, 2006) ("'it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people'") (quoting *Minnesota v. Carter*, 525 U.S. 83, 99 (1998)). Indeed, "physical entry of the home is the chief evil against which the wording of the Fourth

Amendment is directed." *United States v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972).

As this Court has recognized for over half a century, the sanctity of the home merits protection that can be provided only by the Warrant Clause of the Fourth Amendment. Only the requirement of a warrant based on probable cause assures that the decision to invade home privacy is made by "a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 13-14 (1948); *see also Payton v. New York*, 445 U.S. 573, 588 n.26 (1980).

> The right of officers to thrust themselves into a home is . . . a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule to be decided by a judicial officer, not by a policeman or government enforcement agent.

Johnson, 333 U.S. at 14. Accordingly, the Court has recognized as a "cardinal principle" that warrantless home searches "'are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions.'" *Mincey v. Arizona*, 437 U.S. 385, 390 (1978) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)); *see Kyllo*, 533 U.S. at 31 ("With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no."); *Payton*, 445 U.S. at 586 ("It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable.") (citation omitted).

This case is about the scope of those strictly limited exceptions. The Utah Supreme Court held that neither the

"exigent circumstance" exception nor the distinct "emergency aid" exception was satisfied here on the objective record facts. But rather than simply address that straightforward conclusion on its own terms, petitioner and its *amici* urge a genuinely radical revision of basic Fourth Amendment principles – one that would effectively replace the warrant and probable cause requirement that has long governed law-enforcement entries of private homes with an all-purpose inquiry into objective reasonableness. Although couched in seemingly innocuous terms, the regime they propose collapses the emergency aid and exigent circumstances exceptions into a single anemic standard that would allow the government to enter private homes to investigate criminal activity with no warrant, no probable cause, and no real reason to believe that immediate entry was required

No prior case of this Court authorizes that result. This case should not be the first – not least because the issues on which petitioner and the Solicitor General spend so much energy were neither addressed in nor pertinent to the decision below. For the reasons set forth in the margin, this Court need not even consider the doctrinal overhaul proposed by petitioner and the Solicitor General.[2] But if the

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[2] The key to petitioner's and the Solicitor General's novel theory is the contention that the "purpose" of a warrantless home entry – specifically, whether the entry is made for law-enforcement purposes or some other "special need" – is categorically irrelevant under the Fourth Amendment. Even if this Court were to agree, it would not change the outcome of the decision below. Though the Utah Supreme Court did hold that the emergency aid exception may be invoked only when officers are acting in a non-law-enforcement capacity, it did not rely on that holding to decide the case. Instead, the court invalidated the entry because the objective circumstances facing the officers did not give rise to a reasonable belief that an immediate entry was necessary, either to render medical aid or to prevent serious injury. Pet. App. 14-15, 18-20. That holding sufficed to resolve the case below – and should be enough to resolve the case here. Indeed, given the fact-bound and case-specific

Court does consider it, the Court should reject it, as unsupported by precedent and inconsistent with the most basic Fourth Amendment principles.

I. THE EMERGENCY AID EXCEPTION IS NOT APPLICABLE WHERE OFFICERS ENTER A HOME IN A TRADITIONAL LAW-ENFORCEMENT CAPACITY.

Both the State and the Solicitor General argue that the "emergency aid" exception to the warrant and probable cause requirement applies whenever objective facts give rise to a reasonable belief that emergency medical assistance is called for – and regardless whether officers actually enter a home to provide emergency medical aid, or to investigate a crime. Pet. Br. 12-16; U.S. Br. 12-13. That is incorrect. Like other "special needs," the need to render emergency medical aid can justify a search – a search conducted in the absence of a warrant or probable cause – only when the searching officer is acting outside his traditional law-enforcement capacity. If, instead, an officer is pursuing normal law-enforcement ends, then a home entry must be analyzed under the normal warrant and probable cause standard.

A. All Nonconsensual Home Entries Made For The Purpose Of Criminal Investigation Must Be Supported By Probable Cause

This Court's cases have recognized certain distinct categories of nonconsensual warrantless home entries as permissible under the Fourth Amendment. One is typically described as the "exigent circumstances" exception to the warrant requirement. *See, e.g.*, *Kirk v. Louisiana*, 536 U.S. 635, 637 (2002). This exception applies when the police have the

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nature of the merits of the dispositive holding below, the Court may wish to dismiss the writ as improvidently granted.

objective probable cause sufficient to justify a warrant, but the exigencies of the moment preclude intervention and review by a neutral magistrate. "The Fourth Amendment to the United States constitution has drawn a firm line at the entrance to the home, and thus, the police need *both* [1] probable cause to either arrest or search *and* [2] exigent circumstances to justify a nonconsensual warrantless intrusion into private premises." *Id.* (emphasis added) (citation omitted). In other words, even where all agree that the government has probable cause to enter a private home to search for evidence of criminal wrongdoing, only an extremely narrow set of circumstances will rise to the level of an exigency sufficient to allow individual officers to do so without first obtaining the authority of a warrant. *See, e.g., United States v. Santana*, 427 U.S. 38, 43-43 (1976) (hot pursuit); *Warden v. Hayden*, 387 U.S. 294, 298-99 (1967) (same); *Schmerber v. California*, 384 U.S. 757, 770-71 (1966) (destruction of evidence); *Michigan v. Tyler*, 436 U.S. 499, 509-10 (1978) (to protect or preserve life, e.g., burning building).

Another category of permissible warrantless searches involves those that are conducted *not* for the purpose of investigating criminal wrongdoing, but to advance "'special needs' *other than* the normal need for law enforcement." *Ferguson v. City of Charleston*, 532 U.S. 67, 76 n.7 (2001) (emphasis added). This doctrine "has been used to uphold certain suspicionless searches performed for reasons unrelated to law enforcement," and operates as "an exception to the general rule that a search must be based on individualized suspicion of wrongdoing." *City of Indianapolis v. Edmond*, 531 U.S. 32, 54 (2000) (Rehnquist, C.J., dissenting); *see Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (student-athlete drug testing); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990) (drunk-driving checkpoint); *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (border checkpoint). It is precisely because such searches do not involve "the often competitive enterprise of ferreting out

crime," *Johnson*, 333 U.S. at 14, that this Court's "special needs" cases have not required a demonstration of probable cause that the search will yield evidence of a crime. *See Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 667 (1989) ("the probable-cause standard is peculiarly related to criminal investigations") (internal quotation marks omitted). "The traditional warrant and probable-cause requirements are waived" in special needs cases only "on the explicit assumption that the evidence obtained in the search is not intended to be used for law enforcement purposes." *Ferguson*, 532 U.S. at 88 (Kennedy, J., concurring).

In the particular context of home entries, this Court has recognized only one non-law-enforcement purpose that will justify a nonconsensual warrantless entry unsupported by probable cause: the need to render emergency aid "'to protect or preserve life or avoid serious injury.'" *Mincey*, 437 U.S. at 392 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963)). "[T]he Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid." *Id.* As with other "special needs" situations, because emergency aid searches are performed pursuant to an officer's caretaking function rather than his criminal investigation function, such searches need not be supported by probable cause of criminal wrongdoing. Pet. App. 13 ("Because officers who act under the emergency aid doctrine are not conducting a law enforcement mission, they may do so without either obtaining a warrant or demonstrating the presence of probable cause or exigent circumstances.").

Petitioner and its *amici* contend that emergency aid searches are not akin to "special needs" searches, but should instead be treated as just another variant of the exigent circumstances doctrine – albeit a previously unknown variant in which a reasonableness inquiry substitutes for the probable

cause requirement. Pet. Br. 10-11; U.S. Br. 12-13. But the defining characteristics of emergency aid searches – that they are performed for a non-law-enforcement purpose and require no probable cause or individualized suspicion of wrongdoing – correspond precisely to the defining characteristics of special needs searches. Analytically, these searches fall under the special needs rubric, rather than that of exigent circumstances. Application of the emergency aid exception therefore should be guided by the principles animating the special needs cases – in particular, the requirement that the government establish its genuine non-law-enforcement purpose to justify invoking the exception.

B. Inquiry Into Primary Purpose Is Permissible – Indeed Required – Where The Government Seeks To Justify A Warrantless Search Conducted Without Probable Cause

Petitioner (joined by its *amici*) argues that inquiry into purpose is unnecessary – indeed, foreclosed – in analyzing the applicability of the emergency aid exception. If that were so, the import would be startling. As of now, as explained above, police officers acting in a law-enforcement capacity may enter a home without a warrant only if they have *both* probable cause to arrest or search *and* reason to believe that immediate entry is required, under the exigent circumstances exception. But the theory proposed by the State and the Solicitor General would dispense with one (critical) half of that equation: simply by invoking the emergency aid exception, officers pursuing traditional law-enforcement ends could effect a warrantless home entry *without* probable cause so long as there was reason to believe that immediate entry was required. The result would be a dramatic and unwarranted reduction in the protection afforded the home against law-enforcement entries and searches by the government.

In fact, the crucial premise behind petitioner's proposed rewriting of the law is incorrect. It is not the case that all inquiry into "purpose" is categorically impermissible under the Fourth Amendment. To the contrary, as this Court's cases make clear, whether a search conducted without probable cause or any individualized suspicion of wrongdoing may nevertheless be sustained under the Fourth Amendment turns critically on the primary purpose behind the search – specifically, whether it was conducted for law-enforcement or non-law-enforcement reasons.

1. "A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing." *Edmond*, 531 U.S. at 37. Where the government nonetheless seeks to justify such a search by pointing to a special need unrelated to law enforcement purposes, the Court has not hesitated to carefully examine the true "primary purpose" of the search. In evaluating the legality of a drug checkpoint in *Edmond*, the Court expressly held that what "principally distinguishes" permissible suspicionless searches from those that are constitutionally unsound is their "primary purpose." *Id.* at 40. Although the Court had previously upheld programs bearing a superficial resemblance to the one at issue in that case, it had "never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing." *Id.* at 41. To the contrary, the Court has been "particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends." *Id.* at 43. Because the primary purpose of the checkpoint program at issue in *Edmond* "unquestionably" was that of "interdicting illegal narcotics," it was found to be inconsistent with the strictures of the Fourth Amendment. *Id.* at 40. The Court "decline[d] to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes." *Id.* at 44.

The purpose inquiry was acknowledged to be an exception to the usual Fourth Amendment analysis, but it was regarded as a necessary safeguard where a warrant and individualized suspicion are absent. Dissenting in *Edmond*, Chief Justice Rehnquist observed that the special needs inquiry into primary purpose serves an important function: "to both define and limit the permissible scope" of the "intrusive search" of a home. *Id.* at 55. As a result, the purpose of the search could very well determine its legality:

> [A] program driven by an impermissible purpose may be proscribed while a program impelled by licit purposes is permitted, even though the challenged conduct may be outwardly similar. While reasonableness under the Fourth Amendment is predominantly an objective inquiry, our special needs and administrative search cases demonstrate that purpose is often relevant when suspicionless intrusions pursuant to a general scheme are at issue.

Id. at 47.

The Court reiterated the central relevance of the government's primary purpose in *Ferguson* finding that a hospital program of drug-testing for pregnant women was not subject to the "special needs" exception because "the central and indispensable feature of the policy from its inception was the use of law enforcement to coerce the patients into substance abuse treatment." 532 U.S. at 80. In contrast, in each of the prior drug-testing cases, "the 'special need' that was advanced as a justification for the absence of a warrant or individualized suspicion was one divorced from the State's general interest in law enforcement." *Id.* at 79. The Court further noted that it had "tolerated suspension of the Fourth Amendment's warrant or probable cause requirement" in other special needs cases "in part because there was no law enforcement purpose behind the searches in those cases, and there was little, if any, entanglement with law enforcement."

Id. at 79 n.15. In sharp contrast, "the collection of evidence for criminal law enforcement purposes" did not qualify as a special need so as to justify a warrantless, suspicionless search. *Id.* at 83 n.20.

Like the searches at issue in other special needs cases, a genuine emergency aid search is not supported by any individualized suspicion of wrongdoing, much less probable cause. The absence of this traditional Fourth Amendment safeguard requires an even more exacting review of a warrantless search than would otherwise be the case – including an inquiry into the individual officer's purpose in conducting the search. "[A]bsent probable cause, examining a government actor's motivation for conducting an emergency search provides a necessary safeguard against pretextual reliance on community caretaking interests to serve criminal investigation and law enforcement functions." *United States v. Cervantes*, 219 F.3d 882, 890 (9th Cir. 2000). *See also State v. Ryon*, 137 N.M. 174, 188 (2005) (adopting emergency aid test considering officer's purpose in conducting search); *State v. Mountford*, 769 A.2d 639, 644-45 (Vt. 2000) (same); *State v. Jones*, 947 P.2d 1030, 1037 (Kan. Ct. App. 1997) (same); *Gallmeyer v. State*, 640 P.2d 837, 842 (Alaska Ct. App. 1982) (same); *State v. Ferguson*, 629 N.W.2d 788, 792-93 (Wis. Ct. App. 2001) (same); *People v. Mitchell*, 347 N.E.2d 607, 610 (N.Y. 1976) (same).

Petitioner essentially concedes as much, explaining that the Court does engage in a "primary purpose" inquiry for "searches requiring no individualized suspicion." Pet. Br. 18-19 & n.2. What petitioner misses is that an emergency aid search *is* in fact a search requiring no individualized suspicion. It has never been thought, for instance, that an officer may not enter a home to render aid to a person lying unconscious at the foot of the stairs unless there is reason to believe that the person's injuries are the result of criminal activity, rather than a simple fall; the whole point of the

emergency aid exception is to dispense with the probable cause or individualized suspicion requirement so that an officer can provide aid outside the law-enforcement context.

It may be that petitioner is construing the term "individualized suspicion" to mean something like "individualized suspicion of an emergency situation." *See id.*; *see also* U.S. Br. 18 n.18 (equating probable cause of criminal activity with probable cause of an emergency). But as this Court repeatedly has made clear, the individualized suspicion that is absent in special needs cases – and required in all other contexts – is individualized suspicion *of wrongdoing*. *See, e.g.*, *Edmond*, 531 U.S. at 37 ("A search or seizure is ordinarily unreasonable in the absence of *individualized suspicion of wrongdoing*.") (emphasis added). This Court has never sanctioned a warrantless search *for purposes of criminal investigation* absent individualized suspicion of criminal wrongdoing. As explained above, as in other special needs cases, a genuine emergency aid search need not be supported by individualized suspicion of wrongdoing only because the state is not pursuing any law enforcement objective.[3]

2. Petitioner protests that the special needs cases do not permit examination of an individual officer's purpose – *viz.*, whether he acted in a law enforcement or caretaking capacity – but only the programmatic purpose of searches conducted

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[3] Petitioner relies on *United States v. Knights*, 534 U.S. 112 (2001) in support of its argument that motive is irrelevant when a search is supported by individualized suspicion. But as already explained, emergency aid searches, like special needs searches, do *not* require individualized suspicion. In addition, the Court in *Knights* observed that the probationer's privacy interests were compromised by his legal status and by his agreement to be searched as a condition of release. *Id.* at 119 ("Knights's status as a probationer subject to a search condition informs" the Fourth Amendment analysis). *See also Ferguson*, 532 U.S. at 79 n.15 ("probationers have a lesser expectation of privacy than the public at large"). In contrast, respondents' privacy interests here were uncompromised until the officers made their warrantless entry.

pursuant to a general scheme. To be sure, in the special needs cases it has decided, the Court has directed its "primary purpose" inquiry at the programmatic level. *Edmond*, 531 U.S. at 47, 48. But that is simply because there is no reason to conduct such an inquiry at the level of the individual officer – for the program to pass muster in the first instance, decisions about who, when and how to search have been taken out of the individual officer's hands. Officer discretion is cabined at the programmatic level; no inquiry apropos the individual officer is necessary because that individual exercises virtually no discretion at all.[4] In other words, the officer has no "primary purpose" other than to follow established procedure.

In cases involving emergency aid, on the other hand, the necessary constraints on officer discretion are absent. Decisions about who and when and how to search are not made at a programmatic level, but by individual officers acting at their own discretion. But if the Court has "tolerated suspension of the Fourth Amendment's warrant or probable cause requirement [in the special needs cases] in part because there was no law enforcement purpose behind the searches," *Ferguson*, 532 U.S. at 80 n.15, then such an inquiry is required,

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[4] *See, e.g.*, *Vernonia*, 515 U.S. at 650 (upholding a school drug testing policy of student athletes where "a student, with the supervision of two adults, blindly draws the names of 10% of the athletes for random testing"); *Sitz*, 496 U.S. at 453 (upholding Michigan's sobriety checkpoint program, in part because the "checkpoints are selected pursuant to the guidelines, and uniformed police officers stop every approaching vehicle"); *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 622 (1989) (approving regulations concerning alcohol and drug testing of railroad employees "in light of the standardized nature of the tests and the minimal discretion vested in those charged with administering the program"); *Von Raab*, 489 U.S. at 667 (upholding Customs Service drug testing program: "A covered employee is simply not subject 'to the discretion of the official in the field.' The process becomes automatic when the employee elects to apply for, and thereafter pursue, a covered position.") (quoting *Camera v. Mun. Ct.*, 387 U.S. 523, 532 (1967)).

at whatever level the purpose resides, in order to determine whether the closely-guarded exception applies. In other words, it is not the programmatic nature of the searches in the special needs cases that permits consideration of purpose, but the absence of a warrant and individualized suspicion. Were it otherwise, suspicionless drug-testing, traffic stops and other classic "special needs" searches could be conducted for law-enforcement purposes so long as they were performed on a discretionary, non-programmatic basis – a feature that would, on petitioner's account, insulate them from any inquiry into purpose.

Petitioner also contends that any consideration of an officer's subjective purpose is barred by *Whren v. United States*, 517 U.S. 806 (1996), and its progeny, but its reading stretches *Whren* far beyond its limits. In that case, the Court addressed the question whether an officer's impermissible motive can invalidate a seizure that is otherwise supported by probable cause. In answering that question in the negative, the Court repeatedly emphasized that "[s]ubjective intentions play no role in ordinary, *probable-cause* Fourth Amendment analysis." *Id.* at 813 (emphasis added). The Court distinguished previous decisions considering the subjective motive of officers in administrative and inventory searches, noting that in each of those cases the Court was "addressing the validity of a search conducted in the *absence* of probable cause." *Id.* at 811. The problem with considering evidence of subjective intent, it continued, is not "the evidentiary difficulty" of doing so. *Id.* at 814. Rather, the "principal basis . . . is simply that the Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances" – i.e., when usual Fourth Amendment standards like probable cause have been met – "whatever the subjective intent." *Id.*

As a leading commentator has explained, "in light of the way in which the Court in *Whren* distinguished inventory

and administrative searches . . . , it apparently remains open to defendants, whenever the challenged seizure or search is permitted without probable cause because of the special purpose being served, to establish a Fourth Amendment violation by showing the action was in fact undertaken for some other purpose (i.e., mainstream law enforcement)." 1 Wayne R. LaFave, *Search and Seizure* § 1.4(f) (4th ed. 2004). *See also Cervantes*, 219 F.3d at 889-90 ("[B]y distinguishing between cases that require probable cause and those that do not, *Whren* suggests that the officer's motivation for conducting a search is still relevant where no probable cause exists, as is true in emergency doctrine cases."). The Court in *Edmond* found this distinction persuasive, noting that *Whren* "expressly distinguished cases where [the Court] had addressed the validity of searches conducted in the absence of probable cause." *Edmond*, 531 U.S. at 45. Indeed, *Whren* only "reinforces" the conclusion that "programmatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion." *Id.* at 45-46.

Finally, the fact that emergency aid searches concern the warrantless entry and search of a private residence further differentiates them from the *Whren* line of cases. "[O]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence." *Martinez-Fuerte*, 428 U.S. at 561. In light of the heightened privacy interest in the home, the government may only dispense with the warrant and individualized suspicion requirements when it is genuinely pursuing a non-law-enforcement objective. Even the dissent in *Edmond*, while disagreeing that purpose should be relevant in evaluating the constitutionality of the checkpoint at issue there, differentiated that case from those involving "'the sanctity of private dwellings, ordinarily afforded the most stringent Fourth Amendment protection.'" 531 U.S. at 54 (Rehnquist, C.J., dissenting) (quoting *Marti-*

nez-Fuerte, 428 U.S. at 561). Accordingly, the reasoning of *Whren* does not extend to cases in which a search or seizure of a home is unsupported by probable case, or indeed by any quantum of individualized suspicion of wrongdoing.

II. EXIGENT CIRCUMSTANCES DID NOT EXIST TO JUSTIFY THE WARRANTLESS ENTRY

Petitioner does not contend – or point to any record evidence establishing – that the officers' actual, primary purpose in entering the home was to render emergency aid rather than to investigate and stop crimes in progress and arrest the offenders. As the Utah Supreme Court concluded, the officers entered the home "act[ing] exclusively in their law enforcement capacity, arresting the adults for alcohol related offenses, and providing no medical assistance whatsoever." Pet. App. 14. As a result, the warrantless entry at issue is not covered by the emergency aid doctrine, and can be justified, if at all, only under the exigent circumstances exception. Because the existence of probable cause is not at issue,[5] the sole question properly presented here is whether

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[5] The baseline requirement for a warrantless home entry is exigent circumstances *and* probable cause. The Solicitor General suggests that "for protective sweeps ([*Maryland v.*] *Buie* [494 U.S. 325 (1990)]) and searches incident to arrest (*Chimel v. California*, 395 U.S. 752 (1969)), no showing of . . . particularized probable cause of a crime . . . is required before warrantless searches of parts of a home may be undertaken." U.S. Br. 16. Both examples, however, involve searches incident to arrest where the officers have arrest warrants based on particularized probable cause of a crime. The only question presented in those circumstances is the scope of the intrusion justified by that probable cause, once the officers have crossed the threshold into the home, and in the interest of protecting officer safety. Nothing in either *Buie* or *Chimel* suggests that a warrantless entry and search may be conducted with no probable cause and when officer safety is not in jeopardy. While this case does not turn on that distinction, as the presence of probable cause is not at issue, Pet. App. 9, it would be a dramatic departure from precedent for the Court to accept the argument that probable cause need not accompany an exigent circumstances entry and search.

the stipulated record facts reveal "exigent circumstances" requiring an immediate warrantless entry at the time the officers entered. The answer to that question is no, as the three Utah courts below correctly held.

Without a warrant, officers are not free to disregard the stringent protection afforded the home absent a genuine exigency demanding immediate entry. "Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries." *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984). Because this standard is and must be difficult to satisfy in light of the special status of the home, *see supra* at 3-4, few situations present the type of exigent circumstance justifying a warrantless entry, *see United States Dist. Ct.*, 407 U.S. at 318.

The only exigent circumstance asserted below was the purported need "to prevent physical harm to the occupants of the house." Pet. App. 10. The following record facts framed the courts' analysis below:

> The factual findings to which Brigham City stipulated indicate only that "[a]t one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose."

Id. at 14 (quoting trial court, *id.* at 47). Further:

> The record reveals that the police officers heard the adults couple their efforts to physically restrain the juvenile with demands that he "calm down." The scene that played out before the officers prior to their entry into the kitchen was one in which the unanswered question was not whether the occupants of the kitchen were going to escalate the violence but instead whether the adults would be successful in accomplishing their goal of subduing the juvenile.

Id. at 19.[6]

On those facts, three courts found no exigent circumstances. Petitioner contends that the courts erred, because there is – or should be – a bright-line rule authorizing immediate, warrantless entry in all cases involving "any crime of violence," including the simplest of assaults. Pet. Br. 25-26. It is petitioner that errs. The correct approach is the long-standing totality of the circumstances inquiry followed in this Court's cases. Under that standard, the Utah courts' rejection of petitioner's exigent circumstances claim is unassailable.

A. A Claim Of Exigency Should Be Evaluated Under A Totality Of The Circumstances Test, Rather Than Under A Bright-Line Rule

In derogation of this Court's precedents and the sanctity of the home, petitioner proposes a novel, bright-line standard that "any crime of violence is of sufficient gravity to justify immediate police intervention," even in cases involving only a simple assault and no serious injury. Pet. Br. 25-26.[7] What is more, petitioner proposes that an exigency can be assumed whenever there is the *possibility* that a physical injury might occur. Pet. Br. 24 ("any physical altercation . . .

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[6] Petitioner attempts to supplement the factual record in this Court despite the fact that both Utah appellate courts denied similar requests, citing petitioner's failure to properly challenge the factual findings. Pet. Br. 2 n.1; Pet. App. 4 ("Brigham City has urged us to expand our review of the facts to include all of the evidence received at the suppression hearing. Brigham City did not, however, ask us to review the court of appeals's denial of its attempt to expand the scope of reviewable facts."). Likewise, review here should be limited to the facts as stipulated below.

[7] The Solicitor General, though formally advocating a totality of the circumstances approach, endorses petitioner's proposal by arguing that "ongoing physical violence" *ipso facto* suffices to create a sufficient exigency. U.S. Br. 22-23; *see also id.* at 23-24 (stating that any physical altercation justifies entry).

creates a real and substantial risk that serious injury may result"). That standard is flawed both because it ignores this Court's repeated refusal to accept bright-line tests to establish an exigency, and because it would set the bar far too low, permitting warrantless entries in the absence of any real need for immediate police action.

The Court has repeatedly rejected categorical "exigent circumstance" exceptions to the warrant requirement for home entries.[8] *See, e.g., Richards v. Wisconsin*, 520 U.S. 385, 390 (1997) (refusing to adopt bright-line rule that "exigent circumstances justifying a no-knock entry are always present in felony drug cases"); *Mincey*, 437 U.S. at 394-95 (rejecting "murder scene exception" that would have allowed for a warrantless search of a home anytime a homicide is involved); *Randolph*, 547 U.S. _, slip op. at 1 ("the Fourth Amendment does not insist upon bright-line rules" but "recognizes that no single set of legal rules can capture the ever changing complexity of human life") (Breyer, J., concurring). Nonetheless, petitioner asks the Court to "dispens[e] with case-by-case evaluation," *Richards*, 520 U.S. at 391-92, in favor of an exception that would swallow the rule.

As the Court in *Richards* explained, one reason categorical exceptions are disfavored is that they often contain "considerable overgeneralization." *Id.* at 393. That is, while many fact patterns subject to the categorical exception may provide sufficient basis for its invocation, many others may not. But a "blanket rule impermissibly insulates these cases from judicial review." *Id.* Likewise here, it cannot reasonably be contended that every "physical altercation" creates an exigency justifying a warrantless entry and search. "Instead, in each case, it is the duty of a court confronted with the

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[8] Even petitioner recognizes that the Court has not sanctioned such black-and-white rules. *See* Pet. Br. 12 ("This Court has consistently examined cases involving exigent circumstances under an objective standard *based on the totality of the circumstances*.") (emphasis added).

question to determine whether the *facts and circumstances of the particular entry* justified dispensing with" the normal requirements for a home entry. *Id.* at 394 (emphasis added).

Even if it were appropriate to adopt a categorical approach to evaluating exigent circumstances, petitioner's proposed rule would invite warrantless searches where no real urgency can be found. The creation of a categorical exigency for crimes of violence, including simple assaults, would eviscerate the exigent circumstances doctrine. As the Supreme Court of Utah observed:

> If all that were required to authorize a warrantless entry into a home was probable cause that an assault of any severity whatsoever had occurred within the dwelling, the exigent circumstance component of the doctrine would disappear, subsumed within the probable cause requirement.

Pet. App. 19. Such a result would render the warrant requirement a nullity in a broad class of cases.

While a warrantless entry may be justified in *some* circumstances to avoid serious injury where probable cause is also present, petitioner's bright-line rule is wildly overinclusive. According to petitioner, because officers cannot predict which altercations will escalate and result in serious injury, they may act on the presumption that *all* altercations will *always* result in severe bodily harms. Not even petitioner suggests that such a conclusive presumption actually reflects reality for all situations, or even for most situations. The categorical rule instead is urged to relieve officers of the responsibility to make *any* on-the-spot assessments as to whether the need to intervene justifies a forced entry into a private home. To make things easier for officers, the totality of the circumstances analysis would be waived and all such entries would be deemed conclusively reasonable.

This Court has rejected precisely that justification for categorical exceptions to the warrant requirement.

> [T]he mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment. . . . [T]he Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law.

Mincey, 437 U.S. at 393. Thus, the government's interest in "maximum simplicity" advanced by a bright-line rule must yield to the Fourth Amendment's heightened protection of the home. The occurrence of a physical altercation is one factor to be considered under the totality-of-the-circumstances test, but it cannot create a *per se* exigency.

B. The Warrantless Intrusion Was Not Reasonable Under The Totality Of The Circumstances

Based on the totality of the circumstances, the Supreme Court of Utah held that exigent circumstances did not exist to justify the warrantless intrusion. Pet. App. 18-20. Although finding that the altercation between the adults and the juvenile "nudge[d] the line" of an exigent circumstance, the court nevertheless determined that an objective officer would not have believed that immediate entry was required because "the occupants of the kitchen were going to escalate the violence." *Id.* at 19.[9]

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[9] To clarify, the Utah Supreme Court did not engage in any inquiry into subjective motive or primary purpose in considering the exigent circumstances exception, which applies in the traditional law-enforcement context and requires a showing of probable cause. The only purpose at issue in this case arises in connection with the emergency aid exception, discussed *supra*, Part I.

That conclusion is unassailable. Numerous factors that *could* have justified a warrantless entry simply were not present in this case. For example, neither officer safety nor domestic violence was at issue.[10] *Id.* at 17, 25. The occupants of the residence were not using, did not threaten to use, and (as far as the officers knew) did not even have access to any dangerous weapons.[11] Though petitioner speculates that a

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[10] Contrary to petitioner's suggestion, Pet. Br. 26, the Utah Supreme Court noted that "[t]here was no finding that any of the parties to the altercation in the Brigham City home were cohabitants, and therefore, domestic violence considerations have no place in the evaluation of whether exigent circumstances justified the intrusion," Pet. App. 25. But even if domestic violence were a factor here, the police would still be required to assess the situation based on the totality of the circumstances, and enter only when an exigency is present. *See United States v. Davis*, 290 F.3d 1239, 1244 (10th Cir. 2002) (holding that "an officer's warrantless entry of a residence during a domestic call is not exempt from the requirement of demonstrating exigent circumstances"). To be sure, an officer's assessment of the totality of the circumstances may be informed by factors peculiar to the domestic violence context – e.g., that a victim of domestic violence may be more likely to deny the need for police intervention. But even in this context, the officer must make a reasonable judgment in light of all the facts known to him; suspicion of domestic violence does not vitiate the protections of the Fourth Amendment. *See Randolph*, 547 U.S. _, slip op. at 26-27 (Breyer, J., concurring) (emphasizing that totality-of-the-circumstances test applies even in domestic violence context).

[11] Courts have frequently grounded the existence of exigent circumstances on the fact that dangerous weapons were involved. *See, e.g., United States v. Janis*, 387 F.3d 682, 687-88 (8th Cir. 2004) (even if there had been no consent, exigent circumstances justified the warrantless entry in order to secure a handgun for the protection of others); *Estate of Smith v. Marasco*, 318 F.3d 497, 518 (3d Cir. 2003) (warrantless entry into home justified by exigent circumstances where officers believed a laser-sighted weapon was pointed at them); *United States v. Holloway*, 290 F.3d 1331, 1334-40 (11th Cir. 2002) (warrantless entry justified by exigent circumstances where officers responded to a report of gunshots and an altercation in a residence); *United States v. Lawlor*, 324 F. Supp. 2d 81, 85-89 (D. Me. 2004) (same); *cf. United States v. Bates*, 84 F.3d 790, 795 (6th Cir. 1996) (in context of no-knock entry, "[t]he presence of a weapon creates an exigent circumstance, provided the gov-

knife could have been pulled because the altercation occurred in the kitchen, Pet. Br. 28-29, the stipulated record does not indicate that any weapons were involved or could have been involved.

Thus, while petitioner hyperbolically claims that the "officers here were confronted with all but the shots fired," Pet. Br. 29, the actual record reveals no shots, no gun, and no imminent risk of serious injury of any kind. Instead, in a far less dramatic scene, a juvenile who had "smacked" an adult in the nose was now being restrained and "calmed" by adults. Petitioner cites no cases in which such spare indications of risk of physical injury created an exigency under a totality of the circumstances standard – which is why petitioner urges a bright-line, "all assaults" rule instead.

But there is more than just the weakness of the factors *supporting* the officers' warrantless entry. On the other side of the ledger, a great number of factors indicated that the circumstances did *not* require the officers to intervene at the time that they did. For one thing, the offenses involved – including the assault – were not serious crimes. *See Welsh*, 466 U.S. at 753 ("application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed"). Indeed, the officers did not even arrest any individuals for the assault that supposedly justified immediate entry to avoid serious physical harm. The only charges ever filed in the case were for "contributing to the delinquency of a minor, disorderly conduct, and intoxication," Pet. App. 3 – quintessentially minor offenses.

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ernment is able to prove they possessed information that the suspect was armed and likely to use a weapon or become violent").

Perhaps most important, the exigent circumstances inquiry asks not whether warrantless entry might have been justified at some point, had the facts developed in a particular way, but whether *immediate* entry was necessary at the time that it occurred. In this case, the answer to that question is no. This is not a case in which the officers were forced to guess at what was taking place inside and err on the side of safety. Quite the opposite, the officers were right outside the kitchen, watching the events unfold mere feet away, and fully able enter and seize control if and when it appeared that the situation was escalating to the point that it posed a serious threat of physical harm. That was true in part because of the officers' proximity to the events, but also – and importantly – because there was no gun or any other weapon within easy access of any of the persons in the kitchen. This was not, in other words, the kind of situation that was so volatile that it could spiral out of control before the officers would have time to enter and intervene – where, for instance, a gun could be used to inflict serious harm almost instantaneously. Here, there was nothing to prevent the police from continuing to monitor the situation from their prime vantage point, deferring entry unless and until there was an *imminent* threat to physical well-being that could be warded off only by police entry. *Cf.* Pet. App. 20 (noting other actions, short of entry, that officers could have taken to bring situation under control). When what is at stake is the special sanctity of the home, warrantless entry can be justified only as a truly last resort.

III. THE WARRANTLESS ENTRY CANNOT BE JUSTIFIED UNDER THE EMERGENCY AID EXCEPTION

As discussed in Part I, *supra*, the warrantless search of the home in this case does not fall within the narrow range of related "special needs" and "emergency aid" cases for which the warrant and probable cause requirements are inapplicable

– unlike those cases, which involve no law enforcement purpose and thus no need for probable cause, the officers in this case entered solely for law enforcement purposes. Three Utah courts so found and, as noted above, petitioner does not claim otherwise. Accordingly, the "emergency aid" exception invoked by petitioner is categorically unavailable.

It is also unavailable for the reason relied upon by the Utah Supreme Court – even if the entry had been for the non-law-enforcement purpose of rendering emergency medical aid to a person in need, the objective circumstances did not justify a nonconsensual, warrantless entry on that basis.

First, courts should be "especially reluctant to indulge [a] claimed special need" in circumstances like this because privacy interests are at their "zenith" in a home. *United States v. Scott*, 424 F.3d 888, 896 (9th Cir. 2005). *See also Payton*, 445 U.S. at 589 (in no setting "is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home"). The "special needs" exception has been employed rarely, and typically only in situations involving diminished privacy expectations. *See, e.g., Vernonia*, 515 U.S. at 654-57 (public school children who participate in sports have a "reduced expectation of privacy"); *Martinez-Fuerte*, 428 U.S. at 561 ("[O]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence."). When privacy interests are at their height, as they are here, exceptions to Fourth Amendment protections must be even more strictly limited.

Second, the stipulated record reveals nothing approaching a serious medical situation of any kind – much less a situation that could not be handled by the adults in the residence and therefore required police intervention. To the contrary, the putative "emergency" arose from the most trivial physical contact: "at one point, the juvenile got a hand

loose and smacked one of the occupants of the residence in the nose." Pet. App. 3. This "smack" prompted the officers to enter the house, whereupon the "findings of fact disclose nothing to indicate that the officers found it necessary to render medical assistance to the victim of the juvenile's blow or otherwise minister to an injury of the severity necessary to support the invocation of the emergency aid doctrine." *Id.* at 14. Had the officers actually witnessed an "emergency" objectively requiring them to give "aid," it was a gross dereliction of their duty to then ignore that need and go about arresting underaged drinkers. The truth, of course, is that the officers properly understood that no such medical emergency existed – what they misunderstood was their duty to avoid violating the sanctity of the home to enforce the law, absent a genuine exigency requiring immediate entry.

While it is true that the urgency of a situation may not always be fully apparent until the officer enters the home and gains additional information revealing the emergency to be more or less serious, that certainly was not the case here. It is undisputed that the officers had a clear view of the activities inside the residence from their vantage point just outside the kitchen window. The officers had all the information they needed to recognize that no person was in need of immediate protection from serious injury.

This Court in *Mincey* made clear an "emergency" justifying a warrantless entry does not arise with every abrasion or bloodied nose. An "emergency" exists within the meaning of this narrow exception only when there is an objective "need to protect or preserve *life* or avoid *serious injury*." 437 U.S. at 392 (emphasis added). Lower courts as well have correctly discerned that a warrantless entry made without probable cause for the non-law-enforcement purpose of rendering emergency aid may be effected only in grave circumstances. Pet. App. 13 ("'an unconscious, semiconscious, or missing person feared injured or dead' is in the

home"); *Cervantes*, 219 F.3d at 889 ("preservation of life or protection against serious bodily injury"); *United States v. Martins*, 413 F.3d 139, 147 (1st Cir.) ("to safeguard life or prevent serious harm"), *cert. denied*, 125 S. Ct. 644 (2005); *Holloway*, 290 F.3d at 1337 ("endangerment to life").

Petitioner argues that "serious bodily injury" should be interpreted expansively, citing definitions of similar terms from various state criminal codes. Pet. Br. 23-24. Whether an injury is serious enough to support a charge of aggravated assault, however, is a separate question from whether immediate intervention by the *police* is necessary to avoid serious physical harm. *See Mincey*, 437 U.S. at 392 (entry justified only when "person within is in need of immediate aid" from the police). Though the severity of an injury often will be related to the need for police action, the two concepts are distinct. An injury that might not threaten severe harm in most circumstances might nevertheless justify police intervention if the victim is for some reason unable to treat himself or to obtain medical assistance – as might be the case, for instance, if a child alone in a home were hurt. And by the same token, even a serious injury does not justify a nonconsensual police entry if the victim is able to treat himself or to obtain assistance from a family member or medical professional – which is why the paradigmatic case for the emergency aid exception always has been the unconscious victim, unable to help himself or to summon aid. *See* Pet. App. 13 (emergency aid doctrine limited to situations where there is a "'reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead' is in the home"). The critical inquiry is not simply the severity of the injury, but whether, under all the circumstances, the victim requires immediate *police* assistance to avoid serious physical harm.[12]

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[12] Had any medical assistance been needed in this case, for example, there was no reason to think the adult who had been smacked was unable to obtain such aid on his own by, for instance, applying ice to the injury

Thus, although petitioner and the Solicitor General treat the emergency aid and exigent circumstances doctrines as one, they are analytically distinct. In most cases, only the most severe injuries will render a victim unable to help or to obtain help himself, justifying invocation of the emergency aid exception. Because the exigent circumstances exception does not turn on the same inquiry, a greater range of harm might satisfy that exception. *See* Pet. App. 15 ("the range of actual or imminent injury that will support an exigent circumstances intrusion is more expansive than that available under the emergency aid doctrine"). Moreover, that dichotomy is perfectly sensible, as the court below noted, if the right to privacy in the home is to be taken seriously at all. In the exigent circumstances context, the probable cause requirement protects against arbitrary or unwarranted intrusions, so that a lesser showing of physical harm is necessary to constrain police discretion. But under the emergency aid exception, where officers have no basis to believe that any occupants of a residence are engaging in criminal wrongdoing, they must believe, and reasonably so, that a very serious injury inside justifies their warrantless intervention. *See id.* at 13.[13]

But no matter how the inquiry is phrased, no reasonable officer could have believed in this case that the grave circumstances required to invoke the emergency aid doctrine were present in the kitchen they were observing through the

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or even driving himself to the hospital or calling 911, or that the other adult occupants of the home were incapable of providing such assistance.

[13] While petitioner additionally contends that intervention to *prevent* serious harm is permissible under the emergency aid doctrine, that situation in most circumstances will be governed by the exigent circumstances doctrine. *See* Part II, *supra*. If an officer has reason to believe that serious harm is about to befall an occupant of a residence, he likely also has probable cause to believe that a crime is being (or is about to be) committed.

window. If officers can enter a residence without a warrant and without probable cause of criminal wrongdoing merely because one of the occupants is suffering the medical effects of a "smack[]" in the nose, Pet. App. 3, then the doctrine provides no meaningful protection to the cherished "right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Kyllo*, 533 U.S. at 31.

CONCLUSION

For the foregoing reasons, the judgment should be affirmed.

Respectfully submitted,

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March 28, 2006

(8)

No. 05-502

FEB 21 2006

IN THE

Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

v.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Writ of Certiorari to the Utah Supreme Court

BRIEF OF THE NATIONAL LEAGUE OF CITIES, NATIONAL CONFERENCE OF STATE LEGISLATURES, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, AND NATIONAL ASSOCIATION OF COUNTIES AS *AMICI CURIAE* SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the Fourth Amendment prohibits police from entering a residence without a warrant to break up a party that they have observed through an open window and door involves assaultive behavior and unlawful underage drinking that the adults within have been unable or unwilling to control.

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INTEREST OF THE *AMICI CURIAE*

Amici are organizations whose members include state, county, and municipal governments and officials throughout the United States.[1] State and local governments exercise primary responsibility for responding to breaches of the peace and the public expects state and local law enforcement agencies to respond quickly and effectively to events such as occurred in this case. *Amici* accordingly have a strong interest in preserving the ability of the police to take prompt and effective action in situations involving ongoing violence and underage drinking.

This case presents a classic example of the challenges facing law enforcement officers confronting a breach of the peace. Responding to a complaint about loud noise at a residence at 3:00 a.m., police officers encountered a raucous party in progress involving, among other things, the unlawful consumption of alcohol by minors. Through an open window and screen door, the officers saw an intoxicated and violent juvenile who resisted restraint by four adults and punched one of the adults in the face. The officers put a halt to the revels by entering the residence, restoring order, and arresting the adults for contributing to the delinquency of a minor. The Utah Supreme Court ruled, however, that the officers violated the Fourth Amendment because they lacked a warrant to enter the residence. Affirmance of the judgment below would leave the police helpless to promptly and effectively put a halt to a breach of the peace involving ongoing criminal conduct.

In *amici*'s view, the Fourth Amendment does not prevent the police from taking reasonable measures to stop ongoing

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[1] The parties have consented to the filing of this *amicus* brief and their letters of consent have been filed with the Clerk of the Court. This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than *amici* or their members, has made a monetary contribution to the preparation or submission of this brief.

criminal conduct occurring in the officers' presence, even if they must cross the threshold of a residence to do so. Because of the importance of this issue to *amici* and their members, *amici* submit this brief to assist the Court in its resolution of this case.

STATEMENT OF THE CASE

At approximately 3:00 a.m. on July 23, 2000, four Brigham City police officers were directed by a police dispatcher to proceed to a residence at 1074 Orchard Street in response to a complaint about loud noise. J.A. 24-25, 27, 44. Officers Jeff Johnson and Mike DeRyke arrived first, and heard yelling and commotion emanating from the residence, including people "yelling stop, stop" and "get off me." *Id.* at 28; see also *id.* at 25-28. Shortly thereafter, Sergeant Ken Broadhead and Officer Trent Gunn arrived, and the officers then heard additional commotion coming from the house that sounded like an altercation was occurring inside. *Id.* at 28-29, 64-65.

The four officers walked up to the front of the house to investigate, and although they could see a beer bottle on the ledge of the front window, they could not see inside the house because the front rooms were dark. *Id.* at 30-32, 47. Officer Gunn remained in front to secure that egress while the other officers walked along a driveway toward the rear, continuing to hear what sounded like a fight going on inside the house. *Id.* at 32-35.

The trial court found that in light of what they had heard and because it was "obvious" that knocking on the front door would have accomplished nothing, "[i]t was appropriate that th[e officers] proceed down the driveway along the house to further investigate." Pet. App. 47. After walking down the driveway, the officers looked through a slat fence around the residence's back yard, and saw two juveniles drinking beer in the back yard. J.A. 34-37, 66-67. Under Utah law, it is unlawful for any person under age 21 to possess or consume

alcoholic beverages. See Utah Code Ann. §§ 32A-1-105 (30) & 32A-12-209(1) (2005). The trial court found that "[a]t that point, because of the juveniles, there was probable cause for the officers to enter into the backyard." Pet. App. 47.

While Sgt. Broadhead detained the juveniles in the back yard, Officers Johnson and DeRyke walked toward the house. J.A. 36-38, 50. Through a back window, Officer Johnson saw four adult males trying to restrain a juvenile, who in turn was struggling to break free, as the participants to the altercation exchanged threats and obscenities and the adults ordered the juvenile to calm down. *Id.* at 38-39, 58, 72. As Officer Johnson approached the back door, he saw the juvenile free one of his hands and land a punch, bloodying the mouth of one of the adults. *Id.* at 40, 60-61.[2] The trial court specifically found that the officers saw this altercation, including the punch. Pet. App. 47.

Officer Johnson stepped inside the back door and "yelled police," but could not be heard over the tumult. J.A. 40, 62. As Officer Johnson continued to yell for order, the occupants of the house became aware of the officers' presence and the fight gradually came to a halt. *Id.* at 41, 62. Officers Johnson and DeRyke then stepped between the combatants and handcuffed the juvenile. *Id.* at 41, 73.

At that point, the occupants in the house began yelling at the officers, demanding that they leave. *Id.* at 42, 73, 79. The verbal altercation inside the house escalated to the point that Sgt. Broadhead felt it necessary to leave the juveniles who were in his custody in order to assist Officers Johnson and DeRyke inside the house. *Id.* at 42. Ultimately, the officers placed the adults under arrest. Pet. App. 35. The adults,

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[2] Although the screen door was shut, the back door of the house was open and for this reason Officer Johnson was able to see through the door. J.A. 38-40.

now respondents, were charged with contributing to the delinquency of a minor, disorderly conduct, and intoxication. *Id.* at 3.

The trial court granted respondents' motion to suppress all evidence obtained as a result of the officers' entry of the residence on the ground that it was obtained by an unreasonable search and seizure in violation of the Fourth Amendment. The trial court found

> no exigent circumstances sufficient to justify the officer's entry into the residence. What he should have done, as required under the 4th amendment, was knock on the door. The evidence was that there was a loud, tumultuous thing going on, and the evidence is that the occupants probably would not have heard him, but under the 4th amendment he has an obligation to at least attempt before entering.

Id. at 47.

On Brigham City's appeal, the Utah Court of Appeals held that there was no exigency that justified a warrantless entry of the residence. See *id.* at 40-41. Judge Bench dissented, reasoning that "[i]t is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further." *Id.* at 44.

The Supreme Court of Utah affirmed. The court first rejected the need to render emergency aid as a justification for the warrantless entry, concluding that "[t]he magnitude of the harm fell short of the serious bodily injury threshold necessary to access the emergency aid doctrine." *Id.* at 14. The court next found no exigent circumstance justifying the entry, agreeing with the trial court that the officers violated the Constitution because they "made no attempt to knock before entering" even though, as the trial court found, "a

knock 'probably would not have been heard.'" *Id.* at 20.[3] Justice Durrant dissented, concluding that the officers' responses to the exigent circumstances were reasonable in light of the finding that they would not have been heard had they attempted to announce their presence from outside the residence. *Id.* at 31-32. Justice Durrant reasoned that "the Fourth Amendment does not prescribe paralysis when law enforcement officers are eyewitnesses to an ongoing assault and immediate intervention is necessary to prevent physical harm." *Id.* at 25-26.

SUMMARY OF ARGUMENT

While the text of the Fourth Amendment places specific restrictions on the issuance of warrants, when it addresses warrantless police action the Amendment prescribes only the overarching requirement of reasonableness. The text and history of the Fourth Amendment make plain that its Warrant Clause was intended to restrict the circumstances under which a warrant could issue because of the limitations on judicial review of the execution of a warrant, rather than to create a rigid presumption against warrantless search and seizure.

To be sure, it is frequently reasonable for the police to seek a warrant before they enter a residence, where important privacy interests are at stake, because a warrant ensures independent judicial review of the justification for an entry before it occurs. Nevertheless, there are circumstances when it is reasonable for the police—especially when, as here, they observe an assault and other criminal activity occurring within a residence—to act immediately, without seeking a

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[3] The precise finding of the trial court regarding the futility of a police knock was slightly different than the language quoted by the Utah Supreme Court. See Pet. App. 47 ("The evidence is that there was a loud, tumultuous thing going on, and the evidence is that the occupants probably would not have heard him . . . .").

warrant. In such cases, a warrantless entry of a residence is subject to judicial review under the Fourth Amendment for reasonableness.

In this case, the warrantless entry of the residence was objectively reasonable and therefore did not violate the Fourth Amendment. It was plain to the officers arriving at the scene that the proceedings at the residence were out of the control of the adults within. Although the adults were attempting to restrain the juvenile who had punched one of them just seconds before the officers entered the residence, the police reasonably decided to put a stop to the revels without the delay inherent in seeking a warrant. The warrant requirement is imposed in order to minimize the risk of an unjustified intrusion on the sanctity of the home, but here, in light of what the officers had seen, the risk of such an unjustified intrusion was nonexistent. Accordingly, the Fourth Amendment did not require the officers to desist from taking control of the scene until they could obtain a warrant.

Nor were the officers constitutionally obligated to attempt to persuade the occupants of the residence to restore order from outside the threshold. That option might have been some sort of least restrictive means of attempting to enforce the law. The Fourth Amendment does not, however, impose a "least restrictive means" test that permits the judiciary to second-guess police conduct with benefit of hindsight. In this case, the police had a compelling interest in acting immediately to put a halt to the ongoing criminal conduct that they observed. The police conduct at issue here satisfied the Fourth Amendment's fundamental requirement of reasonableness.

ARGUMENT

While it places specific restrictions on the issuance of warrants, the Fourth Amendment imposes only one requirement on police acting without a warrant—reasonableness.

There is no rigid rule requiring a warrant before the threshold of a residence is crossed; it is reasonable to dispense with the requirement of a warrant when the police need to take immediate action. In particular, when the police have an objectively reasonable belief that they must enter a residence without the delays associated with obtaining a warrant in order to put a stop to an ongoing breach of the peace and other criminal conduct, they may do so consistent with the Fourth Amendment. When, as here, the circumstances make clear that a warrantless entry into a residence is objectively reasonable, there is no requirement that peace officers desist from enforcing the law and restoring order until they obtain a warrant or pursue some alternative course of action that is arguably less intrusive on privacy interests. The judgment of the Supreme Court of Utah should therefore be reversed.

I. THE FOURTH AMENDMENT PERMITS WARRANTLESS ENTRY OF A RESIDENCE WHEN THE POLICE REASONABLY BELIEVE THAT IMMEDIATE ENTRY IS NECESSARY.

A. The Fourth Amendment Permits Warrantless Entry Of A Residence When It Is Objectively Reasonable To Act Without Delay.

The Fourth Amendment's text contains specific rules governing warrants, but the only requirement for police search or seizure decisions made on the scene is that they be reasonable. The Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. Accordingly, while warrants must satisfy specific rules involving probable cause, oath or affir-

mation, and particularity, when it comes to warrantless police activity, the Fourth Amendment prohibits only "unreasonable searches and seizures." Thus, as this Court has explained in the context of warrantless search and seizure, "[t]he touchstone of the Fourth Amendment is reasonableness." *United States v. Knights*, 534 U.S. 112, 118 (2001). Accord, *e.g.*, *Ohio v. Robinette*, 519 U.S. 33, 39 (1996); *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977).

The Fourth Amendment's more stringent standards governing the issuance and use of warrants were deliberate. The Framers were especially concerned about warrants because they insulated a resulting search and seizure from judicial review:

> [T]he warrant was a means of insulating officials from personal liability assessed by colonial juries. An officer who searched or seized without a warrant did so at his own risk; he would be liable for trespass, including exemplary damages, unless the jury found that his action was "reasonable." If, however, the officer acted pursuant to a proper warrant, he would be absolutely immune. By restricting the issuance of warrants, the Framers endeavored to preserve the jury's role in regulating searches and seizures.

California v. Acevedo, 500 U.S. 565, 581-82 (1991) (Scalia, J., concurring in the judgment) (citations omitted).[4]

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[4] See also *Vernonia School District 47J v. Acton*, 515 U.S. 646, 669-71 (1995) (O'Connor, J., dissenting); *United States v. Leon*, 468 U.S. 897, 970-72 (1984) (Stevens, J., dissenting). Despite some differences among them on details, the leading scholars of the Fourth Amendment share the view that the Warrant Clause was primarily a response to concerns about the unique potential for abuse of power granted by a warrant. See, *e.g.*, Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 764-81 (1994); Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 619-69 (2000); William J. Stuntz, *The Substantive Origins of Criminal Procedure*, 105 Yale L.J. 393, 396-411 (1995); Telford Taylor, *Two Studies in Constitutional Interpretation*.

These concerns about the warrant as a means of insulating search and seizure from judicial review remain relevant today. While the police are no longer afforded absolute immunity from liability when executing a warrant, see *Malley v. Briggs*, 475 U.S. 335, 340-41 (1986), the scope of judicial review of warrants is significantly circumscribed. When a warrant issues, it is settled that the "magistrate's 'determination of probable cause should be paid great deference by reviewing courts.'" *Illinois v. Gates*, 462 U.S. 213, 236 (1983) (quoting *Spinelli v. United States*, 393 U.S. 410, 419 (1969)). Accordingly, "in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall." *United States v. Ventresca*, 380 U.S. 102, 106 (1965). Moreover, the rule barring the use of evidence obtained in violation of the Fourth Amendment is inapplicable to evidence obtained in reasonable reliance on a warrant. See, *e.g.*, *Arizona v. Evans*, 514 U.S. 1, 10-15 (1995); *Leon*, 468 U.S. at 922-25. In light of the enormous authority granted by a warrant, this Court properly insists on compliance with the specific requirements of the Warrant Clause before it will treat a document as deserving of the special status of a properly authorized warrant. See, *e.g.*, *Groh v. Ramirez*, 540 U.S. 551, 557-58 (2004).

The Warrant Clause, however, is by its terms inapplicable to warrantless search and seizure. Warrantless police conduct is subject to unfettered judicial review; under the Fourth Amendment's first clause, warrantless police action is evaluated for reasonableness. Because warrantless search and seizure is subject to full and independent judicial review, there is no textual, historical, or policy justification for subjecting it to any standard of review more searching than reasonableness.

Search, Seizure, and Surveillance and Fair Trial and Free Press 19-46 (1969).

To be sure, the absence of a warrant informs an assessment of whether a search is constitutionally reasonable. *Payton v. New York*, 445 U.S. 573 (1980), which held that a warrantless arrest of an individual within his home ordinarily violates the Fourth Amendment, stated that "searches and seizures inside a home without a warrant are presumptively unreasonable." *Id.* at 586. The Court reasoned that "the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'. . . [T]he warrant procedure minimizes the danger of needless intrusions of that sort." *Id.* at 585-86 (citations and footnote omitted) (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972) (footnote omitted)).

Elaborating, the Court quoted Justice Jackson's famous explanation of the warrant requirement:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Id. at 586 n.24 (quoting *Johnson v. United States*, 333 U.S. 10, 13-14 (1948)). Thus, the preference for warrants is a means of achieving constitutional reasonableness by protecting the innocent against unwarranted invasions of particularly important privacy interests. Cf. *United States v. Rabinowitz*, 339 U.S. 56, 82 (1950) (Frankfurter, J., dissenting) ("[T]he founders of this country subordinated police action to legal restraints, not in order to convenience the guilty but to protect the innocent.").[5]

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[5] One commentator put it this way:

> [W]hy has the Court invalidated so many searches and seizures that have produced evidence of crime? In many cases, the answer is that

A warrantless entry into a home, however, is not always constitutionally unreasonable. As this Court has explained, "[t]he ordinary requirement of a warrant is sometimes supplanted by other elements that render an unconsented search 'reasonable.'" *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990). Thus, "circumstances may render a warrantless search or seizure reasonable." *Illinois v. McArthur*, 531 U.S. 326, 330 (2001). The presence of exigent circumstances necessitating immediate entry into a residence is one example in which it is constitutionally reasonable to enter a home without waiting for the issuance of a warrant. See, *e.g.*, *Warden v. Hayden*, 387 U.S. 294, 298-99 (1967).[6]

In *Hayden*, for example, the Court held that police could enter a residence in pursuit of an armed robber who had gone into the house minutes earlier, reasoning that "[s]peed here was essential." 387 U.S. at 299. Similarly, it is settled that the Fourth Amendment permits a warrantless entry into a

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> at the time of the search there was an insufficient probability of finding the evidence to justify the risk that an innocent person may be subject to the search. In legal jargon, the Court says that the police lacked probable cause. In other cases, the potential bias of the decisionmaker, be it a policeman or an attorney general, has caused the Court to invalidate a search or seizure. The Court has reasoned that unless a neutral and detached magistrate makes the judgment to allow the search or seizure, there is an unjustifiably high risk that one "engaged in the often competitive enterprise of ferreting out crime" will subject an innocent person to a search or seizure.

Arnold H. Loewy, *The Fourth Amendment as a Device for Protecting the Innocent*, 81 Mich. L. Rev. 1229, 1229-30 (1983) (footnotes omitted) (quoting *Johnson*, 333 U.S. at 14).

[6] In *Payton* itself, the Court was careful to note that it had no occasion in that case "to consider the sort of emergency or dangerous situation, described in our cases as 'exigent circumstances,' that would justify a warrantless entry into a home for the purpose of either arrest or search." 445 U.S. at 583.

burning building to extinguish a fire and "to remain in a building for a reasonable time to investigate the cause of a blaze after it has been extinguished." *Michigan v. Tyler*, 436 U.S. 499, 510 (1978) (footnote omitted). That is because an "immediate investigation" of a fire's origin may assist "to prevent its recurrence, as through the detection of continuing dangers," and "to preserve evidence from intentional or accidental destruction." *Id.* Thus, a warrantless search may be constitutionally reasonable when circumstances call for prompt action without the delays inherent in securing a warrant.

It remains to consider the standards under which a police officer is permitted to conclude that exigent circumstances justify a warrantless entry into a residence. It is to that question that we next turn.

B. A Police Officer's Assessment Of The Existence Of Exigent Circumstances Is Reviewed Under The Fourth Amendment For Reasonableness.

Because this case is not governed by the Warrant Clause, the officers' decision that the exigencies they confronted justified a warrantless entry is properly reviewed for reasonableness. To be sure, when it comes to exigent circumstances, the standard of constitutional reasonableness generally requires that the police have probable cause to believe that an exigency justifying a warrantless entry is present. See *Minnesota v. Olson*, 495 U.S. 91, 100 (1990). Probable cause, however, is neither a technical nor a rigid standard; to the contrary, it embodies the standard of reasonableness. As this Court has explained, "'[i]n dealing with probable cause, . . . as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *Gates*, 462 U.S. at 231 (ellipsis in original) (quoting *Brinegar v. United States*,

338 U.S. 160, 175 (1949)). Accord, *e.g.*, *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (quoting *Gates*, 462 U.S. at 231); *Ornelas v. United States*, 517 U.S. 690, 695 (1996) (same).

For example, in *Schmerber v. California*, 384 U.S. 757 (1966), the Court held that a police officer could require an individual whom he had probable cause to believe had unlawfully driven a vehicle while intoxicated to provide a blood sample because "[t]he officer . . . might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence.'" *Id.* at 770 (quoting *Preston v. United States*, 376 U.S. 364, 367 (1964)). The Court reasoned that inasmuch as "the percentage of alcohol in the blood begins to diminish shortly after drinking stops . . . there was no time to seek out a magistrate and secure a warrant." *Id.* at 770-71.

Thus, a police officer's reasonable belief that he is confronting an exigency is sufficient to establish constitutional reasonableness. The reasonableness of police action within the meaning of the Fourth Amendment is assessed under an objective standard, without reference to the actual motivations of the officers on the scene. See, *e.g.*, *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004); *Whren v. United States*, 517 U.S. 806, 812-13 (1996). As the Court explained in *Ornelas*,

> The principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.

517 U.S. at 696. Accordingly, because in this case an objectively reasonable officer would have believed that there was a sufficiently serious exigency to warrant an immediate

entry into the residence rather than delaying until a warrant could be obtained, the warrantless entry of the residence was constitutional.

II. THE DECISION OF BRIGHAM CITY POLICE OFFICERS TO ACT IMMEDIATELY TO TAKE CONTROL OF THE SCENE OF ONGOING CRIMES WAS REASONABLE.

The Brigham City police officers did not exceed the bounds of constitutional reasonableness when they crossed the threshold of 1074 Orchard Street without a warrant. The party at that location was out of control, and the police reasonably took control of the situation rather than pleading with the occupants from outside the threshold or waiting for the issuance of a warrant. In light of what the officers had already seen from outside the residence, a warrantless entry posed no risk of an unjustifiable invasion of privacy, and was an objectively reasonable means of restoring order and keeping the peace. Accordingly, it did not violate the Fourth Amendment.

A. The Warrantless Entry Was Reasonable.

As a consequence of their observations from outside the house, the police officers on the scene reasonably concluded that a beer bash of considerable proportions was underway. Officer Johnson testified that in circumstances like these, he had observed as many as 20 or 30 underage drinkers trying to flee a residence as the police approached. J.A. 25. The trial court found that the noise coming from the residence was so loud that the officers reasonably concluded that seeking entry from the front door would have been impracticable, that they could not have been heard even when they were in the back yard just outside the kitchen, and that the revels at the

residence included both underage drinking and assaultive behavior. See Pet. App. 46-47.[7]

To be sure, the trial court also found "no exigent circumstances sufficient to justify the officer's entry into the residence." *Id.* at 47.[8] Read most favorably to respondents, perhaps that finding suggests that the officers might have believed that the adults present were able to restrain the juvenile who had just punched one of them and that a warrantless entry was not justified on the ground that either the juvenile or the injured adult was "in need of immediate aid."

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[7] The lower courts did not find that the officers' entry into the backyard or their observation of the struggle going on inside the house while in the backyard violated the Fourth Amendment, nor did respondents press that position in the courts below. Indeed, the Utah Supreme Court stated that the officers' observations from outside of the residence "are not at issue." Pet. App. 9. Inasmuch as the officers were able to see into the backyard through the slats of the fence while standing in a location that was easily accessible to the public, it is apparent that respondents had no reasonable expectation of privacy in the backyard that would entitle them to invoke Fourth Amendment protections. See, *e.g.*, *California v Ciraolo*, 476 U.S. 207, 211-15 (1986); *Maryland v Macon*, 472 U.S. 463, 469 (1985). See also *Minnesota v Carter*, 525 U.S. 83, 103-06 (1998) (Breyer, J., concurring in the judgment). Moreover, under the Fourth Amendment, the authorities may enter property in which there is no reasonable expectation of privacy, even if their conduct amounts to a technical trespass. See *Oliver v. United States*, 466 U.S. 170 (1984). Similarly, the Fourth Amendment permits the police to act on what they see in plain view from a location where they have a right to be because such observations compromise no legitimate expectation of privacy. See, *e.g.*, *Horton v California*, 496 U.S. 128 (1990). Nothing in the findings suggests that any legitimate expectation of privacy held by any of the respondents was infringed by the police entry into the backyard or by the observations the police made prior to their entry into the home.

[8] The trial court's conclusion on this point is not entitled to deferential review. This Court undertakes independent review of the justification for police conduct under the Fourth Amendment, deferring only to the trial court's determination of purely historical facts. See *Ornelas*, 517 U.S. at 696-700.

Mincey v. Arizona, 437 U.S. 385, 392 (1978). But that does not mean that the officers lacked an objectively reasonable belief that immediate police action was necessary to restore order.

The officers on the scene had ample reason to believe that the adults at 1074 Orchard Street could not be trusted to handle the situation with which they were confronted. Those adults were permitting unlawful underage drinking that had already produced at least one predictable result—a physical altercation between one juvenile and four adults. See J.A. 35. If the police had remained outside the residence until they procured a warrant, the unlawful activities within might well have continued and even escalated.

Moreover, even if, as the lower courts evidently believed, the police could have halted the unlawful activities within by pleading for order from outside the house, the delay inherent in obtaining a warrant would have risked the destruction of evidence, as in *Schmerber*.[9] See 384 U.S. at 770. It would also have created a risk that the individuals inside the house could have fled while a warrant was being sought. See J.A. 25, 45, 48, 49. Indeed, some of these suspects might have driven away from the residence, creating a further risk that impaired individuals might drive while intoxicated. Taking control of the scene and physical custody of the perpetrators was the course of action best tailored to restore order, prevent further unlawful conduct, and minimize risk of harm.

Futhermore, in assessing the justification for a warrantless entry, the officers could reasonably consider that it takes substantial time to obtain a warrant. The most expeditious means of obtaining a warrant is by telephone, which requires

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[9] Although the record does not indicate whether any blood or breath tests were performed, at the time the officers entered the residence they could not know whether there might be a necessity for the prompt administration of such tests.

no written application. Under Utah law, an officer can obtain a telephonic warrant by contacting a state magistrate and providing the magistrate with "sworn oral testimony" that must be "recorded and transcribed." Utah Code Ann. § 77-23-204(2) (Bender 2000). The officer must also read the proposed warrant verbatim to the magistrate, who must then consider whether changes should be made before authorizing the officer to sign the magistrate's name to the warrant. See *id.* Federal law contains similar rules governing telephonic warrants. See Fed. R. Crim. P. 41(d)(3)(A).

These requirements are hardly excessive; they are likely compelled by the Warrant Clause's oath or affirmation and particularity requirements. See, *e.g.*, *Groh*, 540 U.S. at 557-58. But given the need for precision in both the oral warrant application and the draft warrant itself, composing even a telephonic warrant application is not simple; the Utah Supreme Court has acknowledged that this process "can take significant time." *State v. Ashe*, 745 P.2d 1255, 1268 (Utah 1987). The case law suggests that obtaining a telephonic search warrant can take from thirty minutes to two hours. See, *e.g.*, *United States v. Tarazon*, 989 F.2d 1045, 1050 (9th Cir. 1993) (thirty minutes insufficient); *United States v. Thomas*, 893 F.2d 482, 485 (2d Cir.) (at least two hours required in New York), *vacated on other grounds*, 916 F.2d 766 (2d Cir. 1990); *United States v. Cuaron*, 700 F.2d 582, 590 (10th Cir. 1983) (thirty minutes insufficient); *United States v. Hackett*, 638 F.2d 1179, 1183 (9th Cir. 1980) (twenty to thirty minutes insufficient); *United States v. Morgan*, 744 F.2d 1215, 1222 (6th Cir. 1985) (thirty minutes sufficient). And in this case the delay inherent in obtaining a warrant would only be increased by the need to locate and rouse a magistrate at 3:00 a.m.

Under these circumstances, it was reasonable for the officers to conclude that the best course of action was for them to enter the residence, take control of the scene, and place those

whom they had observed violate various state criminal laws in custody. The officers had ample reason not to leave the adults who had already let the party get out of control in charge of the premises until a warrant could be obtained. Immediate entry also avoided the potentially substantial delays necessary to obtain a warrant, while ensuring that unlawful underage drinking and assaultive behavior would immediately stop and that no suspects would be able to flee. And by acting immediately, the officers exercised a prerogative the law has traditionally recognized to restore order by making warrantless arrests for offenses committed in their presence. See *Atwater v. City of Lago Vista*, 532 U.S. 318, 329-32, 342-45 (2001); *United States v. Watson*, 423 U.S. 411, 418 (1976). See also *City of Chicago v. Morales*, 527 U.S. 41, 106-09 (1999) (Thomas, J., dissenting).

Most important, under the circumstances of this case the rationale for a warrant vanishes. As we explain above, a warrant is presumptively required for an entry into a residence in order to "minimize[] the danger of needless intrusions" into the privacy of the home by requiring that the pertinent "'inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Payton*, 445 U.S. at 586 & n.24 (quoting *Johnson*, 333 U.S. at 14). Here the officers were not required to draw any inferences; they were confronted with blatantly unlawful conduct occurring within their plain view. Permitting a warrantless entry under these circumstances creates no meaningful risk of a "needless" intrusion on the privacy of the home; but requiring a warrant would place obstacles in the way of officers trying to restore order and enforce the law. Surely the Fourth Amendment's practical and commonsense standard of reasonableness does not require a warrant when the authorities' observations have made it clear that a warrantless search and seizure would not compromise any legitimate expectation of privacy. Cf. *Minnesota v. Carter*, 525 U.S. 83,

105-06 (1998) (Breyer, J., concurring in the judgment) (warrantless observation of drug activity inside apartment through gap in drawn blinds was constitutionally reasonable); *United States v. Jacobsen*, 466 U.S. 109, 118-21 (1984) (federal agents' warrantless opening of parcel and removal and examination of white powder that Federal Express employees had already inspected and described to them infringed no protected expectation of privacy).

B. The Police Lawfully Treated The Crimes They Observed As Sufficiently Serious To Justify A Warrantless Entry.

The Utah Supreme Court expressed concern that the magnitude of the harm threatened by the events at issue in this case was not sufficient to support a warrantless entry of a residence. See Pet. App. 14, 17-18. Indeed, in *Welsh v. Wisconsin*, 466 U.S. 740 (1984), this Court held that "application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed." *Id.* at 753. On that basis, the Court concluded that a warrantless entry of a residence to arrest a suspected drunk driver who had recently arrived home in an apparently intoxicated state violated the Fourth Amendment. *Id.* *Welsh* distinguished *Schmerber* on the ground that "Wisconsin has chosen to classify the first offense for driving while intoxicated as a noncriminal, civil forfeiture offense for which no imprisonment is possible." *Id.* at 754.

In this case, by contrast, the offense at issue—contributing to the delinquency of a minor—is punishable under Utah law by up to six months imprisonment. See Utah Code Ann. §§ 76-3-204(2) & 76-10-2301 (West 2005).[10] Thus, *Welsh*

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[10] The other offenses that supported respondents' arrests were also jailable. Disorderly conduct, which is defined to include "mak[ing] unreasonable noises in a private place which can be heard in a public place,"

provides no support for the decision below. What is more, unlike *Welsh*, this case involves conduct that threatens the welfare of minors, and that fact implicates important state interests that favor immediate police intervention. It is well settled that the States have a compelling interest in protecting the well-being of minors. See, *e.g.*, *Osborne v. Ohio*, 495 U.S. 103, 109-10 (1990); *Ginsberg v. New York*, 390 U.S. 629, 640 (1968). In *Welsh*, however, no comparable and ongoing threat to the welfare of minors or others was present. To the contrary, the Court stressed that because Welsh had "already arrived home, and had abandoned his car at the scene of the accident, there was little remaining threat to the public safety." 466 U.S. at 753.

In this case, just prior to the warrantless entry minors were drinking alcohol and the adults had lost control of events. A warrantless entry here ensured that underage drinking was halted and that a violent and possibly intoxicated minor could be safely returned to his parents by the authorities. Moreover, the officers had already observed several criminal offenses, and, as noted above, the law has long recognized the propriety of peace officers making warrantless arrests for offenses committed in their presence. See *Atwater*, 532 U.S. at 336-40. These important governmental interests—preventing underage drinking, protecting minors, and restoring public order—were not present in *Welsh*.

Utah Code Ann. § 76-9-102(1)(b)(iii) (2005), "is a class C misdemeanor if the offense continues after a request by a person to desist." *Id.* § 76-9-102(3). The punishment for a class C misdemeanor includes a term of imprisonment not exceeding ninety days. *Id.* § 76-3-204(3). And under Utah law, "[a] person may not permit any other person to become intoxicated or any intoxicated person to consume any alcoholic beverage in: any premises of which the person is the owner, tenant, or occupant . . . ." Utah Code Ann. § 32A-12-216(1)(a) (2005). A violation of this prohibition is a class C misdemeanor. *Id.* § 32A-12-216(2).

The State of Utah is entitled to treat the conduct at issue in this case as a sufficiently serious offense to justify a warrantless entry. Underage drinking is a major public health problem. For example, while representing only seven percent of licensed drivers, persons under age 21 represent thirteen percent of those involved in fatal traffic accidents "who had been drinking." Committee on Developing a Strategy to Reduce and Prevent Underage Drinking, National Research Council and Institute of Medicine, *Reducing Underage Drinking: A Collective Responsibility* 60 (Richard J. Bonnie & Mary Ellen O'Connell eds., 2004).[11] The consumption of alcohol also impairs judgment and increases the risk of violent and other risk-taking behavior. See *id.* at 58-65.[12] In light of the magnitude of the societal problems posed by underage drinking, surely it qualifies as a sufficiently serious problem to justify a warrantless entry under exigent circumstances.

Finally, to the extent *Welsh* is relied upon to support the judgment below, the soundness of that decision is open to question. In *Welsh*, Justice Brennan wrote for the Court that Wisconsin's classification of driving while intoxicated as a nonjailable offense was "the best indication of the State's interest in precipitating an arrest." 466 U.S. at 754. More

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[11] Indeed, its concern about underage drinking led Congress to enact the National Minimum Drinking Age Act which made the States' receipt of federal highway funding conditional upon setting a minimum drinking age of 21. See *South Dakota v. Dole*, 483 U.S. 203, 208-09 (1987).

[12] "[A]lcohol [is] reported to be involved in 36 percent of homicides, 12 percent of male suicides, and 8 percent of female suicides involving people under 21—a total of about 1,500 homicides and 300 suicides in 2000." *Reducing Underage Drinking*, *supra*, at 61. Alcohol use among youths is strongly correlated with violence, suicidal behaviors, use of illegal drugs, and sexually risky behaviors. See Ralph Hingson & Donald Kenkel, National Research Council and Institute of Medicine, *Social, Health, and Economic Consequences of Underage Drinking*, in *Reducing Underage Drinking*, *supra*, 351, at 357-60.

recently in *Atwater*, however, the Court took a very different approach. *Atwater* held that the Fourth Amendment permits custodial arrests for nonjailable traffic offenses and articulated a variety of legitimate state interests in making such arrests. See 532 U.S. at 348-54. In particular, the Court explained that Fourth Amendment jurisprudence reflects "an essential interest in readily administrable rules." *Id.* at 347. A rule making the propriety of a search or seizure depend on whether an offense is jailable would fail this test because

> an officer on the street might not be able to tell. It is not merely that we cannot expect every police officer to know the details of frequently complex penalty schemes, but that penalties for ostensibly identical conduct can vary on account of facts difficult (if not impossible) to know at the scene of an arrest. Is this the first offense or is the suspect a repeat offender? Is the weight of marijuana a gram above or a gram below the fine-only line? Where conduct could implicate more than one criminal prohibition, which one will the district attorney decide to charge? And so on.

Id. at 348-49 (citation and footnotes omitted).[13]

There is considerable tension between *Welsh*'s view that a State has no legitimate interest in making custodial arrests for nonjailable offenses and the subsequent holding in *Atwater*. In light of the approach taken in *Atwater*, the decision in *Welsh* is a particularly slender reed on which to support the decision below.

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[13] *Welsh* itself illustrates this point. The offender in *Welsh* had in fact committed a jailable offense since he had a prior conviction for drunk driving, although the arresting officers did not know this at the time of his arrest. See *Welsh*, 466 U.S. at 746 n.6. In *Atwater*, the Court took special note of this point. See 532 U.S. at 348 n.18. The *Atwater* Court also cited the dissenting opinion in *Welsh* with approval. See *id.* at 341.

C. The Officers Were Not Required To Explore Other Means Of Restoring Order Before They Entered The Residence.

The Utah Supreme Court ruled that the Brigham City police officers should have attempted to quell the disturbance by "attempt[ing] to knock before entering" the residence, Pet. App. 20, even though it acknowledged the trial court's finding that a knock probably would have been futile. See *id.* (noting trial court's finding that "owing to the noise and tumult in the kitchen a knock 'probably would not have been heard'"). See also *id.* at 47 (trial court finding on futility of police knock). The Fourth Amendment's practical and commonsense standard of reasonableness does not require the police to undertake what are likely to be ineffectual measures before they can enter a residence to take control of a breach of the peace; nor does it require the police to delay taking action when they confront an exigency.

Although the Fourth Amendment presumptively requires officers to knock and announce their authority when executing a warrant for the search of a residence, see *Wilson v. Arkansas*, 514 U.S. 927 (1995), that presumption is overcome "if circumstances support a reasonable suspicion of exigency when the officers arrive at the door." *United States v. Banks*, 540 U.S. 31, 37 (2003). For example, the police are not required to knock and announce their authority before entering a residence when they "have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997). Surely there is no justification for any different standard governing a warrantless entry under exigent circumstances, as in this case. And here, given the finding of the trial court, it is plain that the officers could have reasonably believed that knocking and

pleading for order from outside the threshold would have been futile given the tumult they observed within. Moreover, given the exigency that justified immediate action to take control of the scene, the officers were under no obligation to delay entry.

Indeed, applying the knock-and-announce principle to this case borders on the absurd. The purpose of the knock-and-announce requirement is to minimize the need to damage private property by a forced entry and to give the occupants an opportunity to prepare themselves for entry. See *Richards*, 520 U.S. at 393 n.5. Here, the officers could enter through an unlocked screen door and probably could not be heard over noise of the ongoing fight. See Pet. App. 47 (trial court findings). Moreover, the fight was occurring in the kitchen, an inherently dangerous location. See J.A. 63 (Officer Johnson's testimony that "[k]itchens are full of weapons"). Under these circumstances, the officers could reasonably believe that "knocking and announcing . . . would be dangerous or futile," *Richards*, 520 U.S. at 394, and that the knock-and-announce rule simply was inapplicable.

One might also hypothesize that the police could have restored order and prevented flight from the scene by impounding the premises from the outside pending the issuance of a warrant. To be sure, this Court has held that the police may quarantine a residence pending the issuance of a warrant when they have probable cause to believe that evidence of a crime is within but lack exigent circumstances that would justify a warrantless entry. See *McArthur*, 531 U.S. at 331-34. Insisting on the use of a quarantine in this case, however, would have required the posting of officers at all points of egress to ensure that no one left the residence while other officers prepared a warrant application and roused a judge at 3:00 a.m.

Such a course of action would place great strain on police resources. Indeed, the record contains testimony that all four

Brigham City police officers on duty at the time responded to the call concerning 1074 Orchard Drive, including two officers who were thereby diverted from DUI patrol. See J.A. 24-25. A rule requiring impoundment of premises would leave the city without an officer to respond to auto accidents, crime victims, domestic violence, or other reports of suspicious or criminal activity. In the event some officers were summoned to another incident before the warrant could be obtained or executed, the Utah Supreme Court's approach would likely require the abandonment of the operation or flight of some or all of the suspects. See *id.* at 25. Surely the Fourth Amendment's standard of reasonableness was not intended to impose such a Hobson's choice on police departments with finite resources.

In any event, even if requesting order from outside the residence or impounding the residence pending issuance of a warrant were practicable alternatives, that still would not mean that these options were constitutionally required. The approach taken by the courts below effectively requires the police—even when they witness the commission of criminal offenses, including an assault and underage drinking—to undertake any step that a court might subsequently characterize as an alternative course of conduct more respectful of privacy interests.

As the Court held in *Atwater*, however, "[o]ften enough, the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest is made." 532 U.S. at 347. Relatedly, "this Court has repeatedly stated that reasonableness under the Fourth Amendment does not require employing the least intrusive means, because '[t]he logic of such elaborate less-restrictive alternative arguments could raise insuperable barriers to the exercise

of virtually all search-and-seizure powers.'" *Board of Educ. of Indep. Sch. Dist. No. 92 v. Earls*, 536 U.S. 822, 837 (2002) (brackets in original) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 n.12 (1976)); see also, *e.g.*, *Atwater*, 532 U.S. at 350-51; *Illinois v. Lafayette*, 462 U.S. 640, 647 (1983).

The approach of the courts below is utterly inconsistent with these standards. Under that approach, whenever a court, with unlimited time for after-the-fact reflection, can think of some alternative course that the police could have taken that might have lessened an intrusion on privacy interests, the court should brand the police conduct as unreasonable under the Fourth Amendment. Few law enforcement decisions about the presence of exigent circumstances—which necessarily must be made within seconds as an officer responds to rapidly unfolding events—could survive such after-the-fact judicial review.

The Fourth Amendment holds police officers responding to a breach of the peace to a standard of objective reasonableness. Under that standard, the officers in this case reasonably decided that they were not constitutionally required to remain outside the residence and plead with the adults inside to restore order and put a halt to underage revels at 3:00 a.m. Instead, the officers properly took control of the scene, thereby halting ongoing criminal conduct, restoring order, and minimizing risk of harm. That course of action was eminently reasonable given the practical realities confronting the officers called to the scene; it was equally reasonable within the meaning of the Fourth Amendment.

CONCLUSION

The judgment of the Supreme Court of Utah should be reversed.

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BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Writ Of Certiorari To The Utah Supreme Court

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QUESTIONS PRESENTED

From outside a home at 3:00 a.m., officers witnessed a tumultuous struggle inside a kitchen between four adults and a juvenile. Upon seeing the juvenile punch one of the adults in the face, the officers entered the home to quell the violence. The questions presented are:

1. Does the "emergency aid exception" to the warrant requirement recognized in *Mincey v. Arizona*, 437 U.S. 385 (1978), turn on an officer's subjective motivation for entering the home?

2. Was the gravity of the "emergency" or "exigency" sufficient to justify, under the Fourth Amendment, the officers' entry into the home to stop the fight?

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BRIEF FOR PETITIONER

OPINIONS AND ORDER

The opinion of the Utah Supreme Court is reported at 2005 UT 13, 122 P.3d 506 (Pet. App. 1-33). An order of the court denying rehearing is unreported (Pet. App. 49). The opinion of the Utah Court of Appeals is reported at 2002 UT App 317, 57 P.3d 1111 (Pet. App. 34-45). The order of the First Judicial District Court of Utah, Box Elder County, granting respondents' motion to suppress is unreported (Pet. App. 46-48).

JURISDICTION

The decision of the Utah Supreme Court was entered February 18, 2005. A petition for rehearing was denied on July 18, 2005 (Pet. App. 49). The petition for a writ of certiorari was filed October 17, 2005 and granted January 6, 2006. This Court has jurisdiction under 28 U.S.C. § 1257(a) (2000).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

1. ***Summary of Facts.***[1] At 3:00 a.m. on July 23, 2000, four Brigham City police officers responded to a local residence in response to a complaint about a loud party. J.A. 24-25 (Pet. App. 2-3). When the officers converged at the curb in front of the residence, they did not hear a party, but a commotion that "sounded like . . . an altercation occurring, some kind of fight." J.A. 25-29. They heard "thumping," people yelling "stop, stop," and someone saying, "get off me." J.A. 28, 46.

The officers walked up to the house and looked through the front window to "ascertain what was going on." J.A. 30. They observed a beer bottle on the ledge of the front window, but could see nothing inside. J.A. 32. Leaving one officer to guard the front door, the other three walked to the corner of the house and down the driveway to the backyard fence "to investigate where [the fight] was coming from." J.A. 32-34. Peering into the backyard through the fence, the officers saw two teenage males drinking beer. J.A. 34-35 (Pet. App. 2-3). They heard one of them say, "he's had too much to drink." J.A. 35. The officers saw no fight in the backyard but "could still hear it," and "[i]t was just as severe as when [they] arrived and was still ongoing." J.A. 35-36.

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[1] The trial court's factual findings are supplemented with undisputed evidence from the suppression hearing *See Ker v. California*, 374 U.S. 23, 34 (1963) (explaining that while the Court "does not sit as in nisiprius to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental – i.e., constitutional – criteria established by this Court have been respected").

"[C]oncerned about the ongoing fight," the officers entered the backyard; while one of them secured the two teenagers, the other two officers walked to the back of the house to investigate. J.A. 36-38 (Pet. App. 2-3). Through a window, the officers saw four adults trying to restrain a teenager against a refrigerator. J.A. 39 (Pet. App. 3). The teenager's hands were doubled into fists and he was "twisting and turning and writhing" in an effort to break free from the grasp of the adults. J.A. 39, 58. The adults were yelling at him to "calm down"; "obscenities [were] flying" and threats were being made. J.A. 39, 58, 71-72.

The two officers walked past a second window to an open back door. J.A. 39-40. The screen door was shut. J.A. 38. After reaching the door, Officer Jeff Johnson saw the teenager wrest a hand free and "land a punch squarely on the face" of one of the adults, drawing blood. J.A. 58-59, 73 (Pet. App. 2-3). At that point, and in the midst of a flurry of activity that ensued, Officer Johnson opened the screen door and yelled, "police," but it "was so loud [and] tumultuous, that nobody heard a word." J.A. 40, 60, 62 (Pet. App. 2, 18). The officers then entered the kitchen and again Officer Johnson yelled as loudly as he could. J.A. 41 (Pet. App. 2). At that point, "some of [the occupants] began to realize" the police were there, and "[o]ne by one, as they became aware," the fight "dissipated." J.A. 41, 62 (Pet. App. 2). To "save anybody else from getting punched," the officers stepped between the combatants and handcuffed the teenager. J.A. 41.

Officer Johnson asked the adult assault victim if he needed assistance, J.A. 73, 79, but the occupants "immediately turned and became verbally hostile," demanding that the officers leave, J.A. 42, 73, 79 (Pet. App. 2). The situation deteriorated from there and the adult occupants were

consequently arrested for disorderly conduct, intoxication, and contributing to the delinquency of a minor. J.A. 42, 79-81 (Pet. App. 3).

2. *Motion to Suppress.* Respondents moved to suppress the evidence of alcohol consumption found inside the home, arguing that the officers' entry violated their Fourth Amendment rights. The trial court granted the motion, ruling that there were "no exigent circumstances sufficient to justify the officer's entry into the residence." Pet. App. 47. The court ruled that what the officers "should have done, as required under the 4th Amendment, was knock on the door," even though "the evidence [was] that the occupants probably would not have heard [it]." Pet. App. 47.

3. *Utah Court of Appeals.* The City appealed and, in a 2-1 decision, the Utah Court of Appeals affirmed. Pet. App. 34-45. The majority held that nothing in the findings indicated that "the altercation posed an immediate serious threat or created a threat of escalating violence." Pet. App. 40. In dissent, Judge Bench observed that "[i]t is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further." Pet. App. 44.

4. *Utah Supreme Court.* On certiorari, the Utah Supreme Court affirmed. Pet. App. 25. The court held that the officers' entry was not justified under either "emergency aid" recognized in *Mincey v. Arizona*, 437 U.S. 385, 392 (1978), or under "exigent circumstances." Pet. App. 11-25. The court distinguished the two exceptions, reasoning that emergency aid applies when officers are motivated by a "caretaking" function and that the exigent circumstances

exception applies when officers "pursu[e] a law enforcement mission." Pet. App. 16.

Emergency Aid. The court held that emergency aid is justified if: "(1) [p]olice have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life"; "(2) [t]he search is not primarily motivated by intent to arrest and seize evidence"; and "(3) [t]here is some reasonable basis to associate the emergency with the area or place to be searched." Pet. App. 12-13 (citation omitted). The court held that the officers failed part one of the test because the fight had not yet resulted in "serious bodily injury." Pet. App. 14. The court also held that the officers failed part two of the test because they were not subjectively motivated by the need to render medical assistance. Pet. App. 13-15.

Exigent Circumstances. A 3-2 majority held that the harm which had thus far been inflicted was also insufficient to apply the exigent circumstances exception. Pet. App. 18-19. Having thus held, the majority concluded that the officers should have knocked if they desired to enter. Pet. App. 19-20.

Dissent. Joined by Justice Wilkins, Justice Durrant dissented from the majority's exigent circumstances opinion, concluding that the majority's standard of risk "consigns law enforcement to the porch steps until it is too late to prevent the very injury the majority concedes officers are entitled to prevent." Pet. App. 31.

SUMMARY OF ARGUMENT

I. *Subjective Motivation Test.* In examining the police officers' entry into the home to break up the fight, the Utah Supreme Court applied a three-part test that required an examination of the officers' motives for entering. The court then concluded that because the officers did not render medical assistance to the victim of the assault, they were improperly motivated by a desire to arrest, rather than to render medical aid. The court's examination of the officers' subjective motives is contrary to this Court's repeated command that subjective motivation should play no role in ordinary Fourth Amendment analysis.

This Court has recognized that a warrantless intrusion does not violate the Fourth Amendment when "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable." *Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978) (citation omitted). The Court has identified several exigencies justifying warrantless intrusion. Some exigencies, like "hot pursuit" and "imminent destruction of evidence," are justified by the government's interest in bringing criminals to justice. Other exigencies, like "protective sweeps" and "weapons frisks," are justified by the government's interest in ensuring officer safety. "Emergency aid" is yet another exigency recognized by the Court. Emergency aid is justified by the government's interest in protecting members of the public from harm.

Like other exigent circumstances, emergency aid exigencies should be judged against an objective standard of reasonableness. Under the objective standard, an officer's subjective motives are irrelevant to the inquiry. The objective standard reflects the Fourth Amendment

principle that "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton v. California*, 496 U.S. 128, 138 (1990).

This Court has examined the purpose behind a particular search only in the context of suspicionless searches conducted pursuant to a general scheme or policy. Inquiry into purpose in such programmatic searches operates as a substitute for individualized suspicion to ensure that the scope of the search is circumscribed by its justification. Emergency aid entries are not programmatic, but arise from, and must be justified by, individualized suspicion. The Utah court's subjective motivation test is therefore inappropriate and should be reversed.

II. ***Gravity of harm or offense.*** The Utah Supreme Court held that even though someone had been punched in the face and the fight was still in progress, the seriousness of the harm occasioned by the fight and the gravity of the offense were not sufficient to justify police intervention. The court held, in effect, that emergency aid entries are justified only if the risk of harm appears to be life-threatening. It held that "exigent circumstances" entries may be justified by a lower threshold of harm or risk thereof, but concluded that an ongoing fight, where a punch to the face had thus far been landed, was insufficient. The Utah court's standard of harm ignores the inherent risks associated with physical altercations and is contrary to this Court's Fourth Amendment jurisprudence.

Under *Mincey*, emergency aid intervention is justified in three circumstances: (1) when the risk to safety or health is life-threatening; (2) when someone has suffered a

serious injury and is in need of immediate aid; and (3) when necessary to prevent serious injury. 437 U.S. at 392-93. The Court has not defined "serious injury," but the term is widely understood to mean an injury that results in protracted loss or impairment of the function of any body member or organ, and may include broken noses, broken jaws, dangerous eye injuries, and knocked-out teeth. Human experience teaches that fist fights may lead to these very injuries, or worse. While they do not inevitably result, the risk is real and substantial and justifies emergency aid intervention to prevent them.

Because all crimes of violence entail a real and substantial risk of serious injury, they can never be treated as minor offenses. This Court recognized as much in *Welsh v. Wisconsin*, 466 U.S. 740 (1984). The State of Utah likewise treats crimes of violence seriously and imposes heightened duties upon officers responding to domestic violence. The right of officers to intervene in such circumstances has been entrenched in the common law since the framing of our Constitution.

III. ***Reasonableness of entry.*** Contrary to the Utah Supreme Court's holding, the Brigham City officers' warrantless entry to quell the violence was objectively reasonable. As observed by the dissent, the officers "were certain that a fight was in progress, that the participants had likely been consuming alcohol, and that at least one individual had already sustained an injury." Pet. App. 30 (Durrant, J., concurring and dissenting). Under these circumstances, the officers' intervention to quell the violence was objectively reasonable.

ARGUMENT

I.

"EMERGENCY AID" INTERVENTION IS JUDGED AGAINST AN OBJECTIVE STANDARD WITHOUT REGARD TO THE OFFICER'S SUBJECTIVE MOTIVES.

Police officers entered a Brigham City home after witnessing a teenager land a punch to the face of an adult during a 3:00 a.m. affray involving four adults and a teenager. The Utah Supreme Court recognized that "[i]t was the acknowledged presence of the authority of the police that quenched the heat in the kitchen." Pet. App. 18. The court nevertheless concluded that the officers' entry was unreasonable. Pet. App. 11-25.

In examining the reasonableness of the entry, the Utah court applied two different tests, depending upon the officers' purpose in entering. Pet. App. 11-16. The court held that if the officers entered in pursuit of a "caretaking" function, the entry is examined under the "emergency aid doctrine," requiring an examination of the officers' subjective motives. Pet. App. 11-15. The court held that emergency aid is justified if three requirements are met:

> (1) Police have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life.
>
> (2) The search is not primarily motivated by intent to arrest and seize evidence.

> (3) There is some reasonable basis to associate the emergency with the area or place to be searched.

Pet. App. 12-13 (quotation and citation omitted). In contrast, the court held that if the officers were "pursuing a law enforcement mission," the entry is examined against the objective standard traditionally applied under the "exigent circumstances" exception, i.e., whether "a reasonable person [would] believe that the entry 'was necessary to prevent physical harm to the officers or other persons.'" Pet. App. 16 (citation omitted).

The Utah court's bifurcated standard is confusing, impracticable, and contrary to this Court's Fourth Amendment jurisprudence.

A. Emergency aid is a subcategory of the exigent circumstances exception.

The touchstone of the Fourth Amendment is, and always has been, reasonableness. *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977). This Court has recognized that a warrantless entry does not violate the Fourth Amendment when "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey*, 437 U.S. at 393-94 (quoting *McDonald v. United States*, 335 U.S. 451, 456 (1948)).

Over the years, the Court has identified several circumstances that justify warrantless searches or entries under the "exigent circumstances" exception. Some exigencies are justified by the government's interest in bringing criminals to justice. For example, the Court has held that exigent circumstances exist when police are in hot pursuit

of a fleeing felon, *Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294, 298-99 (1967) (hot pursuit), or when there is an imminent risk that evidence will be destroyed or lost. *Ker v. California*, 374 U.S. 23, 39-40 (1963) (imminent destruction of evidence); *California v. Carney*, 471 U.S. 386, 390-91 (1985) (automobile exception).

Other exigencies are justified by the government's interest in protecting officers from harm. For example, the Court has held that exigent circumstances exist when there is reason to believe that the home of an arrestee "harbors an individual posing a danger to those on the arrest scene," *Maryland v. Buie*, 494 U.S. 325, 334 (1990) (protective sweep); when there is reason to believe a suspect is armed and dangerous, *Terry v. Ohio*, 392 U.S. 1, 30 (1968) (weapons frisk); and when there is reason to believe that an occupant of a vehicle "is dangerous and . . . may gain immediate control of weapons," *Michigan v. Long*, 463 U.S. 1032, 1049 (1983) (protective search of automobile).

The Court has likewise recognized that exigent circumstances exist when there is a "'risk of danger to . . . persons inside or outside [a] dwelling.'" *Minnesota v. Olson*, 495 U.S. 91, 100 (1990) (citation omitted). Under this "emergency aid" exigency, "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" 437 U.S. at 392-93 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963) (opinion of Burger, J.)).

B. As in other cases involving exigent circumstances, emergency aid entries should be judged against an objective standard of reasonableness.

This Court has consistently examined cases involving exigent circumstances under an objective standard based on the totality of the circumstances. In *Hayden*, the Court examined "the circumstances of [the] case" to determine whether the officers "acted reasonably" when they entered a house in search of a fleeing suspect. 387 U.S. at 298-99. In *Ker*, the Court determined whether the officers' unannounced entry was "unreasonable" in light of the suspect's furtive conduct in eluding police after he purchased marijuana. 374 U.S. at 40-41. In *Buie*, the Court held that a protective sweep is justified when supported "by a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the arrest scene." 494 U.S. at 336. And in *Terry*, the Court emphasized that "it is imperative that the facts be judged against an objective standard." 392 U.S. at 21-22.

Mincey also applied an objective standard. There, an undercover officer was fatally shot in the home of a suspected drug dealer. 437 U.S. at 387. Backup officers promptly entered the home to provide medical aid, search for additional victims, and secure the scene. *Id.* at 387-88. Homicide detectives arrived ten minutes later and conducted a warrantless search that lasted four days. *Id.* at 388-89. The Arizona Supreme Court upheld the four-day search for evidence under a so-called "murder scene exception," an exception to the warrant requirement based on the seriousness of the offense alone. *Id.* at 389-90, 392.

On certiorari, this Court rejected Arizona's murder scene exception as "inconsistent with the Fourth and

Fourteenth Amendments." *Id.* at 395. The Court held that the seriousness of the offense alone does not create exigent circumstances. *Id.* at 394. Rather, the search must be judged "under established Fourth Amendment standards," i.e., whether the exigencies rendered the search reasonable. *See id.* at 393-95 & n.9. In doing so, the Court applied the objective standard traditionally applied in Fourth Amendment cases to determine whether the search was justified by either a need to protect others from harm or by a need to preserve evidence.

The backup officers' initial entry immediately following the shooting was not at issue. *See id.* at 389-90. The Court nevertheless recognized that "'[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency'" and that officers "may seize any evidence that is in plain view during the course of their legitimate emergency activities." *Id.* at 392-93 (citation omitted). The Court further observed that a warrantless intrusion "must be 'strictly circumscribed by the exigencies which justify its initiation.'" *Id.* at 393 (quoting *Terry*, 392 U.S. at 25-26). The Court concluded that because everyone in *Mincey*'s apartment had already been located by the backup officers, the subsequent search "simply [could not] be . . . justified by any emergency threatening life or limb." *Id.*

The Court next considered whether the need to preserve evidence rendered the search "objectively reasonable." *Id.* at 393-94. The Court concluded that where the scene had already been secured, the need to preserve evidence did not justify a warrantless entry. "There was no indication that evidence would be lost, destroyed, or removed during the time required [for the homicide officers] to obtain a search warrant." *Id.* at 394.

The *Mincey* analysis provides the model by which intrusions involving exigent circumstances should be judged – whether justified by the government's interests in bringing criminals to justice or in protecting the safety of officers and members of the public.

C. An officer's subjective motives are irrelevant in determining whether emergency aid is objectively reasonable.

The Utah Supreme Court's examination of an officer's subjective motives for making an emergency aid entry flatly contradicts this Court's repeated command that searches be examined "under a standard of objective reasonableness *without regard to the underlying intent or motivation of the officers involved.*" *Scott v. United States*, 436 U.S. 128, 138 (1978) (emphasis added). This Court has "never held, outside the context of inventory search or administrative inspection . . . , that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment." *Whren v. United States*, 517 U.S. 806, 812 (1996). It should not do so now.

As in other Fourth Amendment contexts, the reasonableness inquiry in an emergency aid case is an objective one: "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 397 (1989); *accord Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (holding that "[r]easonableness . . . is measured in objective terms by examining the totality of the circumstances"). And as in other Fourth Amendment cases, emergency aid "must be 'strictly circumscribed by the

exigencies which justify its initiation.'" *Mincey*, 437 U.S. at 393 (quoting *Terry*, 392 U.S. at 25-26).

As observed by the Court in *Whren*, "the Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances, *whatever* the subjective intent." *Whren*, 517 U.S. at 814. The problem with a test that turns on an officer's subjective motives is that "the constitutionality of an [action] under a given set of known facts will 'vary from place to place and from time to time,'" depending on the officer involved. *Devenpeck v. Alford*, 543 U.S. 146, 154 (2004) (quoting *Whren*, 517 U.S at 815). An entry "made by a knowledgeable, veteran officer would be valid, whereas [an entry] made by a rookie *in precisely the same circumstances* would not." *Id.* There is simply "no reason to ascribe to the Fourth Amendment such arbitrarily variable protection." *Id.*

The subjective motivation test also suffers from a practical problem, i.e., the "evidentiary difficulty" associated with discerning an officer's motives for pursuing a particular course of action. *Whren*, 517 U.S. at 814. As recognized by the Court in another context, police officers frequently "act out of a host of different, instinctive, and largely unverifiable motives." *New York v. Quarles*, 467 U.S. 649, 656 (1984) (holding that public safety exception to the *Miranda* warning requirement does not turn on officer motive). Indeed, "police have 'complex and multiple tasks to perform,' which include not only the apprehension of persons committing crimes, but also the protection of persons 'who are in danger of physical harm.'" 3 Wayne R. LaFave, *Search and Seizure* § 6.6 (4th ed. 2004) (citations omitted). These duties often converge, as was the case here. Yet, the subjective motivation test imposes upon courts the impracticable task of disentangling the various

motives of one or more officers and identifying which motive predominated. Reasonableness should not turn on such untenable "post hoc findings at a suppression hearing." *Quarles*, 467 U.S. at 656.

In sum, "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton v. California*, 496 U.S. 128, 138 (1990). "[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Scott*, 436 U.S. at 138.

D. The Court has examined purpose only in suspicionless programmatic searches, not searches that arise from, and must be justified by, individualized suspicion.

The Utah Supreme Court reasoned that examination of purpose is appropriate in an emergency aid case because, like administrative inspections and inventories, it serves "caretaking" interests rather than criminal justice goals and does not require a showing of probable cause. Pet. App. 13; *accord United States v. Cervantes*, 219 F.3d 882, 888-90 (9th Cir. 2000), *cert. denied*, 532 U.S. 912 (2001); *State v. Ryon*, 108 P.3d 1032, 1038-41 (N.M. 2005); *State v. Mountford*, 769 A.2d 639, 645 (Vt. 2000).

The City agrees that the justification for rendering emergency aid stems from the government's interest in protecting the public from harm and does not require a

showing of probable cause. But these similarities are incidental, not dispositive.

Administrative inspections and inventories, like "special needs" searches and traffic checkpoints, are programmatic searches, conducted pursuant to a general scheme or policy that requires no showing of individualized suspicion. *See City of Indianapolis v. Edmond*, 531 U.S. 32, 45-46 (2000); *Whren*, 517 U.S. at 811-12 & nn.1-2. In contrast, emergency aid intrusions "are not programmatic but are responsive to individual events," *Michigan v. Tyler*, 436 U.S. 499, 507 (1978), and must be justified by those events, Pet. App. 12-13. Like investigative detentions and other "field" decisions, they entail "an entire rubric of police conduct" that "necessarily [requires] swift action predicated upon the on-the-spot observations of the officer on the beat." *Terry*, 392 U.S. at 20; *accord Buie*, 494 U.S at 331-32.

The distinction is important. As noted, this Court has been willing to examine purpose in cases involving programmatic searches. *See Edmond*, 531 U.S. at 45-48; *Whren*, 517 U.S at 812. It has not been willing to do so in cases involving non-programmatic searches. In non-programmatic searches, reasonableness "rests on ordinary Fourth Amendment analysis that considers all the circumstances of a search." *United States v. Knights*, 534 U.S. 112, 122 (2001). Accordingly, the reasonableness of a non-programmatic search "'turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time,' and not on the officer's actual state of mind at the time the challenged action was taken." *Maryland v. Macon*, 472 U.S. 463, 470-71 (1985) (quoting *Scott*, 436 U.S. at 136).

In such cases, "the issue is not [the officer's] state of mind, but the objective effect of his actions." *Bond v. United States*, 529 U.S. 334, 338-39 n.2 (2000). A test that turns on an officer's subjective motives is simply "incompatible with a proper Fourth Amendment analysis." *Graham*, 490 U.S. at 397. Because emergency aid intrusions are non-programmatic, subjective motives are irrelevant in assessing their reasonableness.

A few courts have reasoned that because emergency aid intrusions are justified upon a showing of reasonable suspicion, rather than probable cause, examination of an officer's subjective motives is appropriate to safeguard against pretextual searches. *Cervantes*, 219 F.3d at 889-90; *Ryon*, 108 P.3d at 1046; *Mountford*, 769 A.2d at 645. It is true that police intervention to render emergency aid is justified upon a showing of individualized suspicion, akin to reasonable suspicion, rather than probable cause. *See* Pet. App. 12-13 (Utah Supreme Court holding that police must show "an objectively reasonable basis to believe that an emergency exists" rather than probable cause).[2] However, this Court has only examined purpose in the context

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[2] The reasonable suspicion standard for emergency aid intrusions is consistent with the standard applied by this Court to other exigent circumstances that are justified by the need to protect the safety of officers or others. *See, e.g.*, *Buie*, 494 U.S. at 334 (holding that protective sweep is justified upon a showing of "a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the arrest scene"), *Long*, 463 U.S. at (1983) (holding that a protective automobile search is justified upon a showing of a reasonable "belief that [the officer's] safety or that of others was in danger"); *Terry*, 392 U.S. at 27 (holding that a weapons frisk is justified upon a showing that "a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger").

of searches requiring no individualized suspicion. *Edmond*, 531 U.S. at 45-46.

The Court settled this issue in *Knights*, where it refused to consider the officer's motives in conducting a search supported only by reasonable suspicion. There, a detective from the sheriff's department searched a probationer's apartment for evidence of vandalism against a power company. *Id.* at 114-15. The detective did not obtain a warrant, but relied instead on the probation agreement permitting searches based on reasonable suspicion alone. *Id.* at 115. After weighing the government's interests in protecting society from probationers against probationers' reduced privacy interests, the Court concluded that "the balance of these considerations requires no more than reasonable suspicion to conduct a search of [the] probationer's house." *Id.* at 118-21.

The probationer argued that the search nevertheless violated the Fourth Amendment because it was conducted for an investigatory, rather than probationary, purpose. *Id.* at 116-18. The Court refused to consider his claim, holding that there was no basis for examining the purpose of the search because the reasonableness of the search "rests on ordinary Fourth Amendment analysis that considers all the circumstances of a search." *Id.* at 122.

In sum, examination of an officer's subjective motives is inappropriate and unnecessary in examining emergency aid entries. Like other intrusions involving exigent circumstances, the requirement of individualized suspicion is the safeguard against unreasonable police conduct. A showing of individualized suspicion "ensure[s] that police discretion is sufficiently constrained." *Whren*, 517 U.S. at 817-18 (quotations and citations omitted). The court has

examined purpose in programmatic searches only because no such safeguard exists. Examination of purpose in programmatic searches operates as a substitute for individualized suspicion to ensure that the scope of the search is circumscribed by its justification. Even then, the Court has since suggested that "inquiry into purpose is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene." *Edmond*, 531 U.S. at 48.

* * *

This Court should reverse the Utah Supreme Court's holding that an emergency aid entry violates the Fourth Amendment if the officer was "primarily motivated by intent to arrest and seize evidence." Pet. App. 12.

II.

A WARRANTLESS ENTRY TO STOP A FIGHT IN PROGRESS IS JUSTIFIED BY THE GOVERNMENT'S LEGITIMATE AND SUBTANTIAL INTERESTS IN PROTECTING THE PUBLIC FROM HARM AND IN PREVENTING CRIMES OF VIOLENCE.

In addressing the circumstances under which a warrantless home intrusion is justified, the Utah Supreme Court asked what it characterized as "the nub of the matter: how grave must the impending harm be to create an exigent circumstance?" Pet. App. 10. The court concluded that the answer depends on both the officer's motive and whose safety is at issue.

The court held that officers motivated primarily by the desire to protect others from harm ("emergency aid doctrine") may enter if necessary "for the protection of

life." Pet. App. 12. The court explained that under this standard, police may only enter to administer medical assistance to a person they have reason to believe "is *suffering* from a *serious* physical injury." Pet. App. 13 (first emphasis added). The court further held that such an entry is restricted to those circumstances where police have "'an objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead' is in the home." Pet. App. 13 (citation omitted).

If, on the other hand, officers are pursuing a "law enforcement mission" (exigent circumstances exception) and act to protect themselves or others, the court held that the necessary degree of harm is not as great. Pet. App. 15. However, the court applied different "threshold[s] of harm," depending on whose safety is at issue. Pet. App. 17-18. The court held that a "reduced quantum of harm" applies if officer safety is at issue. Pet. App. 17. On the other hand, the court held that "the license extended to law enforcement to [ensure officer safety] does not apply" when the intrusion is made to protect occupants of a home. Pet. App. 17. The court reasoned that a higher threshold of harm is required in the latter case because occupants of a home "may well choose to expose themselves to greater actual or potential harm to preserve their right to be left alone" and "may even engage in acts that meet the legal definition of assault." Pet. App. 18. The court did not identify the quantum of harm it deemed necessary to justify entry to protect others in the course of a law enforcement mission, but concluded that an ongoing fight where one person had already been punched was not enough. Pet. App. 19.

The Utah court's trifurcated standard of harm is not only confusing and unmanageable, but contrary to this Court's jurisprudence.

A. Emergency aid is justified by the need to protect and preserve life, to administer medical aid for a serious injury, and to prevent serious injury.

The question of what degree of harm or impending harm will justify a warrantless intrusion to protect others was answered in *Mincey*. The Court first observed that both federal and state courts have recognized that an emergency aid entry is justified when there is reason to believe "that a person within [a home] is in need of immediate aid," *Mincey*, 437 U.S. at 392. The Court concluded that police are justified in making a warrantless intrusion when there is a "'need to protect or preserve life or avoid serious injury.'" *Mincey*, 437 U.S. at 392-93 (citation omitted). The *Mincey* standard thus permits warrantless intervention in three circumstances.

First, a warrantless intrusion by police is warranted whenever the risk to health or safety is life-threatening. It may thus be reasonably understood that police may enter in such medical emergencies as heart attack, organ failure, stroke, seizure, unconsciousness, or massive hemorrhaging. A warrantless intrusion would likewise be justified in response to shots fired or threats made with weapons. *See, e.g.*, *McDonald*, 335 U.S. at 454 (recognizing that officers may enter a home upon "hear[ing] a shot and a cry for help").

Second, police may intervene when someone has suffered a "serious injury" and is in need of "immediate

aid." *Mincey*, 437 U.S. at 392. This Court has not defined serious injury. However, "serious bodily injury" and equivalent terms have been widely understood to include injuries that result in "protracted loss or impairment of the function of any bodily member or organ."[3] The term is also often understood to include injuries that cause extreme physical pain.[4] One state has aptly defined serious injury as an injury that requires medical treatment by a physician, other than first aid (defined as "one-time treatment or subsequent observation of scratches, cuts not requiring stitches, minor burns, splinters, and contusions or a diagnostic procedure, including examinations and x-rays, which do not ordinarily require medical treatment

---

[3] *See, e.g.*, 18 U.S.C § 1365(h)(3); Ala. Code § 12-15-65, Ark Code Ann. § 12-12-503; Cal. Penal Code § 417 6, Col Rev. Stat. Ann § 18-1-901, D.C Code § 2-1542; Fla Stat. Ann § 316 192; Haw. Rev. Stat. § 707-700; 415 Ill. Comp Stat. Ann. 5/44; Ind. Code Ann. § 35-41-1-25; Iowa Code Ann. § 321J 1; Ky. Rev. Stat. Ann. § 500.080; La. Rev Stat. Ann § 14:34.1; Me. Rev. Stat. Ann. tit. 17-A, § 2; Md. Code Ann., Criminal Law § 8-508; Mich Comp. Laws Ann § 324 20139; Minn. Stat. Ann. § 609.02, Mont. Code Ann. § 45-2-101; Neb. Rev Stat § 28-109; N.H. Rev Stat. Ann § 625·11; N.J. Stat. Ann. § 2C:38-2; N.Y. Penal Law § 10.00, N.C Gen. Stat. Ann. § 20-160.1; N.D. Stat § 12.1-01-04; Okla. Stat. Ann tit. 10, § 7001-1.3, 18 Pa. Cons Stat. Ann § 2301; R.I Stat. § 11-5-2; S.C Code Ann § 23-31-400; Tenn. Code Ann. § 39-11-106; Tex Penal Code Ann. § 1 07; Utah Code Ann. § 76-1-601; Vt. Stat. Ann. tit. 13, § 1021; Va. Code Ann. § 16.1-283; Wash. Rev. Code Ann. § 79A 60 060; W. Va Code, § 61-8B-1; Wis Stat Ann § 939 22; Wyo Stat § 6-1-104 (The statutes cited above are the most recent version as set forth in Westlaw).

[4] *See, e g.*, 18 U.S.C. § 1365(h)(3); Ala.Code § 12-15-65; Ark. Code Ann. § 12-12-503; 415 Ill. Comp. Stat. Ann. 5/44, Ind. Code Ann. § 35-41-1-25; La. Rev. Stat. Ann. § 14:34.1, Mich. Comp. Laws Ann. § 324.20139; N.C. Gen. Stat. Ann. § 20-160.1; N.D. Stat. § 12.1-01-04; Okla. Stat. Ann. tit 10, § 7001-1 3; Tenn. Code Ann § 39-11-106, Va. Code Ann. § 16.1-283.

even though provided by a physician or other licensed professional"). S.C. Code Ann. § 52-19-50(52).

A survey of cases reveals that courts have found serious bodily injury (justifying aggravated assault charges) "where the victim suffered a broken ankle, arm, back, cheek bone, collarbone, finger, hand, jaw, leg, nose, rib, shoulder, and skull." Tracy A. Bateman, Annotation, *Sufficiency of Bodily Injury to Support Charge of Aggravated Assault*, 5 A.L.R. 5th 243, 276 § 2(a) (1992 & Aug. 2005 Supp.) (references omitted). Courts have also found serious injury where a victim's teeth have been dislodged or knocked out. *Id.* at 329-30, 343 §§ 28, 44.

And finally, the *Mincey* standard permits police to intervene when necessary to "avoid," or prevent, "serious injury." *Id.* The question of whether the circumstances create a risk of serious injury justifying police intervention, like any other Fourth Amendment issue, depends upon the totality of the circumstances confronting the officer at the time. The Fourth Amendment thus permits emergency aid intervention if supported by "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing" that serious injury may result absent intervention. *Buie*, 494 U.S. at 334.

Under this standard, any physical altercation involving adults, or even teenagers, creates a real and substantial risk that serious injury may result. Human experience teaches that fist fights may lead to broken noses, broken jaws, dangerous eye injuries, concussions, or worse. While these injuries do not inevitably result, the risk is real and substantial. In the face of these inherent risks, the Fourth Amendment does not require an officer "to simply shrug

his shoulders" and allow the violence to continue. *Adams v. Williams*, 407 U.S. 143, 145 (1972). The Utah Supreme Court was wrong in holding otherwise.

B. Police are justified in entering a home to stop ongoing crimes of violence.

For the same reason, any crime of violence is of sufficient gravity to justify immediate police intervention. In these cases, the government's interest in protecting others from harm converges with its interest in stopping and preventing crime. This Court's decision in *Welsh v. Wisconsin*, recognized as much. 466 U.S. 740 (1984).

In *Welsh*, the Court held that a non-criminal offense for driving while intoxicated (DWI) was too minor to justify a warrantless entry to preserve evidence under the exigent circumstances exception. *Id.* at 752-54. The Court did not, however, treat crimes of violence as minor. Quoting verbatim from Justice Jackson's concurrence in *McDonald*, the Court recognized that offenses involving ongoing "violence or threats of it" may be immediately acted upon by police:

> "Whether there is reasonable necessity for a search without waiting to obtain a warrant certainly depends somewhat upon the gravity of the offense thought to be in progress as well as the hazards of the method of attempting to reach it. . . . It is to me a shocking proposition that private homes, even quarters in a tenement, may be indiscriminately invaded at the discretion of any suspicious police officer engaged in following up offenses that involve no violence or threats of it. While I should be human enough to apply the letter of the law with some indulgence to officers

> acting to deal with threats or crimes of violence which endanger life or security, it is notable that few of the searches found by this Court to be unlawful dealt with that category of crime. . . ."

Id. at 750-51 (quoting *McDonald*, 335 U.S. at 459-60 (Jackson, J., concurring)).

The State of Utah has also demonstrated a substantial interest in deterring and punishing crimes of violence. Even a simple assault, involving no serious injury, is punishable by up to six months in jail. Utah Code Ann. § 76-3-204(2) (1999); Utah Code Ann. § 76-5-102(2) (1999). And in cases involving domestic violence, as this case reasonably appeared to be, Pet. App. 22 n.7, Utah law imposes an affirmative duty on law enforcement officers "to use all reasonable means to protect the victim and prevent further violence," including assisting the victim and other affected family members in removing essential personal effects from the home, obtaining medical treatment, and obtaining emergency housing or shelter. Utah Code Ann. § 77-36-2.1(1) (1999). In short, the State of Utah does not treat crimes of violence as minor.

Moreover, the right and duty of police to intervene in the face of violence was well entrenched in the common law at the time of the framing of our Constitution. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 326 (2001) (observing that the Court's interpretation of the Fourth Amendment "is guided by 'the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing'"). In this regard, Burn observed that "[t]here are some cases in which a constable may and ought to break into a house, although no felony has been committed, when the necessity of the case will not admit of delay, as when persons are fighting furiously in a house." 1

Richard Burn, *The Justice of the Peace and Parrish Officer* 1062 (30th ed. 1869). Hale explained that "[i]f there be an affray in a house, where the doors are shut, whereby there is likely to be manslaughter or bloodshed committed, the constable of the vill having notice thereof and demanding entrance, if they within refuse to do it but continue the affray, the constable may break open the doors to keep the peace and prevent danger." 2 Matthew Hale, *The History of the Pleas of the Crown* 95 (1736). Chitty noted that "when an affray is made in a house, in the view or hearing of a constable, he may break open the outer door in order to suppress it." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 52 (1816). And Hawkins agreed that "if an affray be in a House, the Constable may break open the Doors to preserve the peace." 1 William Hawkins, *A Treatise of the Pleas of the Crown* 137 (1716); *see also* 1 Edward East, *Pleas of the Crown* 322 (1806).

In light of the common law at the time of the framing, the State's demonstrable interest in deterring and punishing crimes of violence, and this Court's discussion in *Welsh*, the Utah Supreme Court erred in holding that the ongoing assault in the Brigham City residence was an exigency of insufficient gravity to justify a warrantless entry.

III.

THE OFFICERS' ENTRY INTO THE HOME TO STOP THE FIGHT WAS REASONABLE UNDER THE FOURTH AMENDMENT.

Applying the appropriate standards, the Brigham City officers' entry into the home was "objectively reasonable." *Mincey*, 437 U.S. at 394. Arriving at the front curb, the officers heard "an altercation occurring, some kind of

fight." J.A. 25-29. They heard "some thumping," people yelling, "stop, stop," and someone say "get off me." J.A. 28, 46. The altercation continued with no drop in intensity as the officers investigated first from the front window, then from the driveway, and finally from the back door. J.A. 32-36. Even as the officers watched the four adults fight to restrain the juvenile from the back, they did not enter. J.A. 39-40, 58. But when the teenager wrested a hand free and punched one of the men in the face, the officers acted. They pulled open the screen door, and without crossing the threshold, shouted into the house in an attempt to identify themselves. *See* J.A. 40-41. But the altercation "was so loud [and] tumultuous, that nobody heard a word." J.A. 40-41. The officers then entered the kitchen and Officer Johnson again shouted as loudly as he could. J.A. 41. Only then did the "altercation abate[]." Pet. App. 18.

The officers' warrantless entry into the home was justified by the need to quell the ongoing violence and prevent further harm to those inside. As observed by the dissent, the officers "were certain that a fight was in progress, that the participants had likely been consuming alcohol, and that at least one individual had already sustained an injury." Pet. App. 30 (Durrant, J., concurring and dissenting). The tumultuous and violent circumstances confronting the officers at the time would "warrant a reasonably prudent officer in believing," *Buie*, 494 U.S. at 334, that entry was necessary to "avoid serious injury," *Mincey*, 437 U.S. at 392.

Moreover, because the altercation was in the kitchen, an officer could reasonably believe that "a knife [could be] pulled from a nearby kitchen drawer, elevating [further] the potential severity of physical harm that a participant in the fight – or an innocent bystander – could suffer." *See*

App. 31 (Durrant, J., concurring and dissenting); J.A. 63. As observed by the First Circuit Court of Appeals, "[e]vidence of extreme danger in the form of shots fired, screaming, or blood is not required for there to be some reason to believe that a safety risk exists." *Fletcher v. Town of Clinton*, 196 F.3d 41, 49 (1st Cir. 1999). The officers here were confronted with all but the shots fired.

In concluding that the officers' entry was not justified, the Utah Supreme Court asserted that the officers should have known that the fight would have eventually ended without escalated violence. Pet. App. 19. But where the court recognized that "[i]t was the acknowledged presence of the authority of the police that quenched the heat in the kitchen," Pet. App. 18, its assertion is pure speculation. Neither it, nor the officers, possessed the clairvoyance to know how the fight would play out. Neither the court nor the officers could know whether the violence would abate or escalate. Nor could they know "which of the parties to the melee were victims and which were instigators." Pet. App. 29 (Durrant, J., concurring and dissenting).

Moreover, the court's judgment of the officers' actions against this speculative conclusion – rendered eight months after oral argument in what the court characterized as "a close and difficult call," Pet. App. 19 – contravenes this Court's teaching that searches "be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396 (addressing reasonableness in use of force case). "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them" at the time of the intrusion. *Graham*, 490 U.S. at 397 (applying objective test in use of force case). The "calculus of reasonableness must embody allowance for the fact that police officers are often forced to make

split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving." *Id.* at 396-97. The Utah Supreme Court failed to make this allowance.

* * *

In sum, the officers' entry to quell the violence and prevent further injury was objectively reasonable. Just as "it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze," *Tyler*, 436 U.S. at 509, so too would it defy reason to suppose that police officers must secure a warrant or consent before entering a home to put down an ongoing fight.

CONCLUSION

For the reasons stated above, this Court should reverse the decision of the Utah Supreme Court.

Respectfully submitted,

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BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Writ Of Certiorari To The Supreme Court Of The State Of Utah

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STATEMENT OF THE CASE

On July 23, 2000, Brigham City, Utah police officers were dispatched to a home for a noise complaint. J.A. 24, 43. This led to the eventual arrest of the Respondents for contributing to the delinquency of a minor, furnishing alcohol to minors, disorderly conduct and intoxication – all misdemeanors. J.A. 1. After being formally charged, the Respondents moved to suppress the evidence seized by the police during the officer's warrantless entry into the house. J.A. 2. Following an evidentiary hearing, the trial court granted the motion to suppress. J.A. 94, Pet. App. 46-48. The Utah Court of Appeals and Utah Supreme Court agreed with the trial court's suppression order.

As to the underlying facts, when the officers arrived at the scene of the complaint, they stood on the curb and heard loud yelling coming from the direction of the residence they were called to investigate. J.A. 26-28. The officers eventually made a determination that the commotion in the house sounded like there was something going on, maybe even a fight. J.A. 29.

The officers testified that they could have knocked on the front door to see what was going on, but decided not to based on a claim of officer safety. J.A. 29-30. Subsequent to that decision the officers put aside their safety concerns to investigate the area. J.A. 33. The officers saw what appeared to be two high-school-aged males drinking beer in the back yard. J.A. 34-35.

The officers then went further into the back yard of the home where the Respondents were, and one officer was able to observe four people restraining a juvenile by holding his wrists and pinning him against a refrigerator. J.A. 39. At this time, the home's screen door was shut, but

the regular door was open. J.A. 38-39. Law enforcement did not act on what they saw.

Through the screen door one officer was able to observe this juvenile get a hand free and hit one of the men who was holding him. J.A. 40. The officer then decided to enter the home without knocking, and stepped inside the door and announced his presence. J.A. 40. Once the occupants became aware of the officer's presence, the situation dissipated. J.A. 41. At no time did law enforcement offer any emergency aid to anybody in the home, but rather made the arrests which they thought were needed. J.A. 76.

SUMMARY OF ARGUMENT

This matter has come before this Court based on three different Utah State Court's application of the Fourth Amendment of the United States Constitution. One question to be resolved is whether a law enforcement officer's subjective or objective intent governs the application of the emergency aid exception to the Fourth Amendment in relation to a warrantless entry into a home. Specifically, does the standard enunciated in *People v. Mitchell*, 347 N.E.2d 607 (N.Y. Ct. App. 1976), govern an analysis in the application of the emergency aid exception? There is adequate legal support, which is grounded in a common sense approach, which supports the application of this subjective intent analysis.

A workable definition of the terms of "objective" and "subjective" has been identified. *People v. Dickson*, 144 Cal. App. 3d 1046, 1063 (Cal. Ct. App. 1983), *rev'd on other grounds*, *People v. Hull*, 34 Cal. App. 4th 1448 (Cal. Ct. App. 1995). Under an objective standard, an analysis is

made whether the threat law enforcement faced was so imminent and serious a reasonable law enforcement officer would believe a warrantless entry was necessary to save lives and property. The subjective standard would ask whether the law enforcement officer was indeed motivated primarily by a desire to save lives and property. *Dickson*, 144 Cal. App. 3d at 1063.

The other issue before the Court is whether a minor misdemeanor rises to the level this Court enunciated in *Mincey v. Arizona*, 437 U.S. 385 (1978), as forming a basis of using the emergency aid exception to enter a home without a warrant. These factors are whether somebody is in need of immediate aid, or whether evidence would be lost, removed or destroyed. *Id.* at 392, 394. Under this standard, the situation has to be more serious than a minor altercation.

Based on the fact that officers in the present matter stood outside the home, and only misdemeanor, non-assault offenses were charged, the requisite level of necessity was not reached to rise to the level of entering a home under *Mincey*. There was no immediate need for help, and there was no likelihood that any evidence would be lost, removed, or destroyed.

ARGUMENT

A. EVALUATING LAW ENFORCEMENT'S SUBJECTIVE INTENTIONS IS AN INTEGRAL PART OF FOURTH AMENDMENT PROTECTIONS AGAINST WARRANTLESS ENTRIES INTO A HOME, AND EQUALLY SERVES THE NEEDS OF LAW ENFORCEMENT AND CITIZENS

A person is protected from unreasonable searches of their home and person, and warrantless searches are *per*

se unreasonable but for a limited set of exceptions. U.S. Const. Amend. IV; *Katz v. United States*, 389 U.S. 347, 357 (1967); *Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971). The protections related to a home are important because a person has a subjectively legitimate expectation of privacy in their home. *Kyllo v. United States*, 533 U.S. 27, 32-33 (2001) (citations omitted). One of these exceptions is the emergency aid exception. *Mincey v. Arizona*, 437 U.S. 385, 392-93 (1978) (citations omitted). The analysis of law enforcement officer's subjective intent is vital to protecting a person's rights under the Fourth Amendment, as well as meeting the emergency aid exception under *Mincey*. By failing to examine a law enforcement officer's subjective intent, law enforcement's discretion to enter a home without a warrant is broadened. Simply put, an officer's state of mind must be evaluated to ensure there is not an intent to abuse the warrant process. Jacqueline Bryks, *Exigent Circumstances and Warrantless Home Entries: United States v. MacDonald*, 57 Brook. L. Rev. 307, 335 (1991). While it is true that "[s]ubjective intent alone does not make otherwise lawful conduct illegal or unconstitutional.", *Whren v. United States*, 517 U.S. 806, 813 (1996) (quotations and ellipses omitted), this has not been applied to cases of a warrantless entry into a home.

In *Whren* this Court was asked to determine whether a temporary motor vehicle stop and detention was a violation of the Fourth Amendment protections. *Id.* at 808. This Court rejected claims that a law enforcement officer's subjective intent was to be evaluated in this type of stop. However, it was noted there are exceptions to this general statement. Specifically, it was noted that a balancing act is required when the search and seizure is "[c]onducted in an

extraordinary manner, unusually harmful to an individual's privacy . . . " *Id.* at 818. These include cases of unannounced entry into a home, and entry into a home without a warrant. *Id.* (citations omitted).

The seminal state appellate case related to the emergency aid exception to the Fourth Amendment, and the appropriate analysis concerning a law enforcement officer's intent, was decided almost thirty years ago. *People v. Mitchell*, 347 N.E.2d 607 (N.Y. Ct. App. 1976). In this case, the state appellate court discussed and applied the emergency aid exception to the Fourth Amendment. The Court announced certain requirements in this exception's application. These are: (1) law enforcement must have reasonable grounds to believe there is an emergency which needs their immediate assistance to protect life or liberty; (2) any search under this exception must not be primarily motivated by an intent to arrest a person or seize evidence; and (3) there has to be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. *Id.* at 609 (citations omitted). A reading of *Mitchell* shows this is a multi-faceted test which can be viewed as a subjective standard. *Id.* at 609-10. A number of courts since *Mitchell* have analyzed the emergency aid exception to the Fourth Amendment, and favorably cited to *Mitchell*.[1] While courts may look

[1] *State v. Gallmeyer*, 640 P.2d 837, 842 (Alaska Ct. App. 1982); *State v. Fisher*, 686 P.2d 750, 759-61 (Ariz. 1984); *Wofford v. State*, 952 S.W.2d 646, 651 (Ark. 1997); *People v. Hebert*, 46 P.3d 473, 480 (Colo. 2002); *United States v. Bell*, 357 F.Supp.2d 1065, 1074 (N.D. Ill. 2005); *State v. Mendez*, 66 P.2d 811, 820 (Kan. 2003); *United States v. Meixmer*, 128 F.Supp.2d 1070, 1074 (E.D. Mich. 2001); *State v. Resler*, 306 N.W.2d 918, 923 (Neb. 1981); *State v. Macelman*, 834 A.2d 322, 326 (N.H. 2003); *State v. Cheers*, 607 N.E.2d 115, 117 (Ohio Ct. App. 1992); *State v. Mountford*, 769 A.2d 639, 644 (Vt. 2000); *State v. Nichols*, 581 P.2d

(Continued on following page)

favorably upon the emergency aid exception, it must be strictly construed to protect a person's rights. *Lubenow v. North Dakota Hw'y Comm'r*, 438 N.W. 2d 528 (N.D. 1989) (Levine, J. concurring). The question is, then, why use a subjective, rather than objective, standard in applying the emergency aid exception to the Fourth Amendment?

A reason for applying a subjective rather than objective standard in evaluating the use of the emergency aid exception is "[a]n officer engaged in the often competitive enterprise of ferreting out crime . . . may lack sufficient objectivity to weigh correctly the strength of the evidence supporting the contemplated action against the individual's interests in protecting [their] own liberty and the privacy of [their] own home." *Stealgald v. United States*, 451 U.S. 204, 212 (1981) (citations omitted). Using a subjective standard, as found in *Mitchell*, addresses this concern and takes into account the necessary requirement to protect a person against warrantless entries in a home.

An analysis of an officer's subjective intent does not harm law enforcement roles. *State v. Fisher*, 686 P.2d 750 (Ariz. 1984). In this matter, a defendant who was found guilty in a capital murder case appealed a trial court's decision denying his Motion to Suppress. In denying the defendant's request, the Arizona court applied the various *Mitchell* standards in finding that the subjective element was met. *Id.* at 760-61. *See also*, *State v. Kraimer*, 298 N.W.2d 568, 574-76 (Wis. 1980) (upholding a warrantless entry of a home based on the officer's subjective intent which was demonstrated by his obvious concern for the

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1371, 1373 (Wash. Ct. App. 1978); *United States v. Borchardt*, 809 F.2d 1115, 1117 (5th Cir. 1987).

children at the potential crime scene and the potential victim).

The Fourth Amendment protections are vital to protecting a person's legitimate expectation of privacy in their home. These protections are heightened in relation to a warrantless entry into a home. There is no reason to not take the doctrine offered by *Mitchell* and apply this standard in relation to the emergency aid exception under the Fourth Amendment. As noted, many courts favor this type of analysis. This is what the Utah courts have applied. Pet. App. 12.

The case before this Court began as misdemeanor offenses where law enforcement stood outside the home and watched the events transpire. J.A. 39. When law enforcement made their warrantless entry, no medical treatment was offered to anybody – including the alleged victim. J.A. 76. Applying a purely objective standard would diminish the Respondent's constitutional protections. Rather, in the present matter, and similar to cases throughout the country, the facts should be evaluated subjectively concerning why the law enforcement officers entered the home. This is what the Utah Supreme Court appropriately did. Pet. App. 12. As noted *supra*, not looking at law enforcement's subjective intent would lead to an officer's entry rights being unnecessarily broadened at the expense of the Respondents and people who are similarly situated.

Applying only an objective intentions test places an insurmountable restriction on a person's Fourth Amendment protections, and eats away at the protections which the warrant requirement offers by allowing warrantless entry into a home on only one part of what should be a

multi-part standard. This Court has never before permitted warrantless entry into a home for law enforcement purposes without a warrant, or probable cause plus an exigency. This Court has allowed law enforcement's subjective intent to be evaluated when looking at programmatic non-home cases. *City of Indianapolis v. Edmond*, 531 U.S. 32, 46 (2000); *Ferguson v. City of Charleston*, 532 U.S. 67, 84 (2001). These areas are different from a home. Protections offered to a home rise to such a level that as a general rule law enforcement must knock and announce before entering a person's home. *Wilson v. Arkansas*, 514 U.S. 927 (1995). Applying only an objective intent standard could also lead to law enforcement coming up with pretextual reasons, based only on objective factors, which would make it impossible, or extremely difficult, to challenge at a court hearing. If a non-home is afforded a subjective intent analysis for programmatic searches, it is just as appropriate to apply such an analysis to a home.

Balancing the constitutional protections of the Fourth Amendment supports the application of a standard similar to *Mitchell*. As such, the Respondents would ask this Court to adopt what some have determined to be a subjective standard to look at an officer's intent in entering a home under the emergency aid exception.

B. A MINOR MISDEMEANOR ALTERCATION DOES NOT WARRANT DISREGARDING THE FOURTH AMENDMENT PROTECTIONS UNDER THE AUSPICES OF THE EXIGENT CIRCUMSTANCES EXCEPTION TO GAIN ENTRY INTO A HOME WITHOUT A WARRANT

There are many cases which demonstrate the level of gravity which is necessary in applying the emergency aid

exception to the Fourth Amendment. *Turner v. State*, 645 So.2d 444, 447 (Fla. 1994) (a suicide attempt in the presence of law enforcement); *United States v. Presler*, 610 F.2d 1206, 1211 (4th Cir. 1979) (seeking a missing residential occupant); and *United States v. Goldenstein*, 456 F.2d 1006, 1010 (8th Cir. 1972) (seeking a person known to suffer from a gunshot). A key determination concerning whether the gravity of the situation warrants the application of the exigent circumstances exception to the Fourth Amendment is whether "[t]here are exigent circumstances in which police action literally must be now or never to preserve the evidence of the crime . . . " *Roaden v. Kentucky*, 413 U.S. 496, 505 (1973); *United States v. Turner*, 650 F.2d 526, 527 (4th Cir. 1981) (noting the degree of urgency is a factor that must be considered). Issues related to the gravity of a situation leading to the application of the emergency aid exception to the Fourth Amendment are fact specific, and appellate courts should be reluctant to overturn those determinations. *Minnesota v. Olson*, 495 U.S. 91, 100-01 (1990); *United States v. Thomas*, 372 F.3d 1173, 1177 (10th Cir. 2004). Generally speaking these usually involve felony, and not misdemeanor, offenses. However, courts are not silent on misdemeanor offenses.

Misdemeanor offenses are not of such a serious nature as to warrant an attempt to use the emergency aid exception to side-step the necessity for obtaining a warrant to enter a home. *State v. Santiago*, 619 A.2d 1132, 1134 (Conn. 1993); *People v. Reinhardt*, 366 N.W.2d 245, 248 (Mich. Ct. App. 1985); *King v. City of Ft. Wayne, Ind.*, 590 F.Supp. 414, 422 (N.D. Ind. 1984); *State v. Lee*, 457 N.E.2d 377, 379-80 (Ohio 1983); and *Prather v. State*, 182 So. 2d 273, 276 (Fla. 1966).

This Court has given adequate guidance concerning the type of emergency that would rise to the level of exigent circumstances to enter a home without a warrant. *Welsh v. Wisconsin*, 466 U.S. 740 (1984). This case began with a driver of a vehicle who appeared to non-law enforcement people to either be sick or drunk. *Id.* at 742. The driver had actually left the scene and abandoned his car. However, law enforcement was able to locate the driver based on his vehicle's registration. He was arrested at his home, and was cited for DWI and refusal to submit to a breath test. *Id.* at 743. This Court noted that "Our hesitation in finding exigent circumstances, especially when warrantless arrests in the home are at issue, is particularly appropriate when the underlying offense for which there is probable cause to arrest is relatively minor." *Id.* at 750. This Court held that the "[a]pplication of the exigent circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed," *Id.* at 753. While this was a non-criminal traffic offense, the same type of application is viable for other misdemeanors.

A review of the record by the Utah Supreme Court shows the circumstances of the present case were not severe enough to warrant the application of the emergency aid exception to the Fourth Amendment. The State relies on the fact that this matter was an assault as the basis of forming the exigency. However, the assault did not rise to the requisite level to create an exigency as required. This is demonstrated by the simple fact that the Respondents were not charged with assault. J.A. 1. Nor did the police officers give medical aid to anybody in the home, but instead only acted in their law enforcement capacity and

instituted arrests. As the Utah Supreme Court notes, "[t]he circumstances known to the officers at the time of entry did not create a reasonable belief that emergency aid was required." Pet. App. 15.

Expanding the ability of law enforcement to execute a warrantless home entry based on an officer's view concerning an alleged emergency will allow this exception to swallow the rule. Existing precedent allows entry to stop serious harm. Adopting the Petitioner's view allows a law enforcement officer to claim they objectively thought an emergency existed for misdemeanor offenses, and not having a subjective intent evaluation concerning their warrantless entry. This seriously hinders a person's Fourth Amendment protections. Law enforcement should be able to intervene as long as the *Mincy* and *Welsh* factors are met. The present matter is lacking these factors. Nor was there a "now or never" requirement as found in *Roaden* – the officers stood outside and watched things transpire before entering the home. J.A. 38-39.

Adopting a bright-line rule as some may suggest is not necessary because this Court has already given adequate guidance concerning minor offenses and the emergency aid exception. Adopting a bright line rule would subject the Respondents, and people throughout the country, to attempts to use the emergency aid exception to side-step the requirement for obtaining a warrant.

C. THE OFFICER'S ACTIONS THE NIGHT THEY ENTERED THE HOME WITHOUT A WARRANT WERE PROPERLY REVIEWED BY THREE DIFFERENT COURTS AND FOUND TO HAVE VIOLATED UTAH LAW AS WELL AS A COMMON SENSE APPROACH TO FOURTH AMENDMENT JURISPRUDENCE

As noted previously, Utah and many other jurisdictions look at what has come to be known as the subjective intent standard in the emergency aid exception to the warrant requirement. The facts of this case show that the officer's did not have a subjective intent to offer aid to anybody in the home. They actually stood outside the home and watched the events unfold. When they did enter, no medical treatment was offered. J.A. 76. The transcript of the suppression hearing does not even show that any law enforcement officers asked if the alleged victim was hurt or needed any treatment.

The Petitioner seeks to rely on the claim of violence as a basis to enter the home. However this was not the level of violence which would and should lead to a disregarding of the constitutional protections which the Respondents are entitled to. Subjective intent of the officers at the scene has to be evaluated, and that is exactly what three different Utah courts did in this matter. This is also the same standard that various courts throughout the country, as cited herein, follow.

The Petitioner seeks to rely upon the claim that there was an emergency in the home which required law enforcement to enter. However, the standards found in *Mincey* and *Welsh* regarding this type of entry are not met. Interestingly, applying a subjective view to law enforcement's intent would actually lead to a determination of

why the officers entered and if there was a true emergency then their entry would stand.

CONCLUSION

For the reasons stated above, this Court should affirm the decision of the Utah Supreme Court and apply appropriate standards throughout the country.

Respectfully submitted,

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Supreme Court of the United States

BRIGHAM CITY,

Petitioner,

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR, AND SANDRA TAYLOR,

Respondents.

On Writ Of Certiorari To The Utah Supreme Court

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

ARGUMENT

I.

EMERGENCY AID SHOULD BE JUDGED AGAINST THE TRADITIONAL OBJECTIVE STANDARD APPLIED IN OTHER CASES INVOLVING SAFETY EXIGENCIES

This Court has recognized a number of "safety exigencies" that justify warrantless police action, including weapons frisks, protective automobile searches, and protective sweeps. In each case, the warrantless police intrusion is justified by the need to protect the safety of officers or others and is judged against an objective standard based on the totality of the circumstances, without regard to the officer's subjective motives or intent.[1]

In *Mincey v. Arizona*, 437 U.S. 385 (1978), the Court identified another safety exigency that justifies warrantless police action. The Court recognized that police may enter a home without a warrant "'to protect or preserve life or avoid serious injury,'" otherwise known as rendering "emergency aid." *Id.* at 392-93 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963)).

Like other safety exigencies, emergency aid should be judged against an objective standard: the facts, and rational inferences from those facts, must warrant a

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[1] *See Terry v. Ohio*, 392 U.S. 1, 27 (1968) (holding that "the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his safety or that of others was in danger"); *Michigan v. Long*, 463 U.S. 1032, 1050 (1983) (same); *Maryland v. Buie*, 494 U.S. 325, 336 (1990) (holding that sweep must be "justified by a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the arrest scene").

"reasonably prudent [person] in the belief that [the] safety . . . of others [is] in danger," *Terry*, 392 U.S. at 27, and that prompt action is necessary to "'protect or preserve life or [prevent] serious injury,'" *Mincey*, 437 U.S. at 392-93 (citation omitted). As in other Fourth Amendment contexts, the officer's conduct must also be "reasonably related in scope to the circumstances which justified the interference in the first place." *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968).[2]

A. This Court should not abandon the traditional and straightforward standard of objective reasonableness in favor of the complex and confusing standard adopted by the Utah Supreme Court.

Respondents and their amicus, National Association of Criminal Defense Lawyers (NACDL), ask this Court to abandon the objective standard that this Court has traditionally applied in cases involving safety exigencies. They urge the Court to instead adopt Utah's bifurcated test, which requires the trial court to first identify and measure the motives that prompted police action, and then apply one of two different tests depending on that finding. *See* Resp. Brf. 3-8; NACDL Brf. 6-17. The Court should reject this confusing and radical approach to Fourth Amendment jurisprudence.

As explained in the City's opening brief, Pet. Brf. 15-16, determining the motivations of one or more officers is a

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[2] The record does not suggest, and respondents have never argued, that the officers entered areas outside the kitchen and dining room until after the occupants were arrested.

challenging and unrealistic task for courts. But worse, the bifurcated test is confusing and impractical for officers in the field. Where the "law enforcement" and "caretaking" functions of police possibly or necessarily converge, officers cannot be expected to identify and separate, "under pressure and in minutes," their motives for acting and then apply the appropriate test. *Wayne*, 318 F.2d at 212. "[O]fficers should not have to make [such] fine judgments in the heat of the moment." *Thornton v. United States*, 541 U.S. 615, 632 (2004) (Scalia, J., concurring in the judgment).

Circumstances often dictate that officers serve as both caretakers and peacekeepers, as in this case.[3] Accordingly, attempting to neatly separate those roles in a post hoc suppression hearing, or insisting that officers pick a role before they act, is impractical and, as acknowledged by the Utah Supreme Court itself, "artificial." Pet. App. 16.

The need for emergency aid may or may not arise in the course of an officer's criminal law enforcement activities. Emergency aid may be justified in contexts wholly

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[3] The record reveals that Officer Jeff Johnson acted in his capacity as both a law enforcement officer and as a caretaker. Contrary to assertions made by respondents and their amicus, Officer Johnson repeatedly testified that he entered to prevent further harm and to otherwise render assistance to the adult assault victim. *See* J.A. 41 (testifying that he handcuffed the juvenile "[i]n an effort to save anybody else from getting punched"), 43 (testifying that they "were not trying to be intrusive as much as trying to prevent somebody from getting hurt"), 69 (testifying that he "entered the home because people were being hurt"), 73, 79 (testifying that he asked the adult assault victim "if he was okay and if he needed any help"). Officer Johnson also acknowledged that once in the home, having handcuffed the juvenile assailant, he did not comply with the adults' demand to leave because people were "going to be taken into custody for the assault." J.A. 73.

divorced from criminal enforcement, as when officers enter to render medical assistance to a heart attack victim. On the other hand, emergency aid may be justified in the course of a criminal investigation, as when officers respond to a shooting. *See Mincey*, 437 U.S. at 392 (recognizing that "when the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises"). Sometimes, the line is unclear, as when officers respond to an emergency and there is some suspicion of foul play, e.g., attempted suicide or homicide.

Given the varied and often ambiguous circumstances in which such safety exigencies arise, an officer's actions should be judged against, and guided by, a nontechnical, "straightforward rule" that can be "easily applied, and predictably enforced." *New York v. Belton*, 453 U.S. 454, 459 (1981). As recently observed by this Court, "the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made." *Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001). The traditional objective standard applied by the Court in other cases involving safety exigencies provides that standard. It reflects both the realities faced by the officer in the field and the government's substantial interest in protecting others from harm.

B. Inquiry into motive is unnecessary because emergency aid is justified and limited by the individual circumstances at the time of entry.

Respondents and their amicus contend that scrutiny of an officer's motives in emergency aid cases is necessary to appropriately limit officer discretion and prevent pretextual searches. Resp. Brf. 4, 6-7, 11; NACDL Brf. 7-17, 25-26. NACDL reasons that emergency aid intrusions should be subject to the same purpose inquiry made in "special needs" cases because, like special needs searches, emergency aid intrusions serve non-law enforcement interests and do not require individualized suspicion of criminal wrongdoing. NACDL Brf. 8-15. These similarities do not justify an inquiry into purpose in emergency aid entries.

Special needs searches are programmatic measures that address remote safety risks and require no individualized suspicion. In contrast, emergency aid entries are responsive measures that address imminent safety risks and require individualized suspicion of danger. Therefore, unlike special needs searches, emergency aid entries are both objectively justified and limited by the facts and circumstances occurring at the time of entry. The requirement of individualized suspicion of danger "ensure[s] that police discretion is sufficiently constrained." *Whren v. United States*, 517 U.S. 806, 817-18 (1996) (quotation marks and citations omitted). No such safeguard exists in the case of the suspicionless special needs search; hence the need for an inquiry into programmatic purpose.

NACDL contends that only a suspicion of "criminal wrongdoing" obviates the need for inquiry into purpose. This argument lacks merit. It is not the nature or object of the suspicion that obviates the need for such an inquiry, but the requirement that the suspicion be grounded in the

facts and circumstances confronting the officer, viewed objectively. *See generally*, Brief for the United States as Amicus Curiae Supporting Petitioner (U.S. Brf.) 15-21. This Court has not examined the underlying purpose of a search unless no such safeguard exists. *See generally*, Pet. Brf. 16-20. It should not do so now.

II.

EVOLVING VIOLENCE POSES AN INHERENT RISK OF SERIOUS HARM AND THUS JUSTIFIES IMMEDIATE POLICE INTERVENTION

Last month, this Court recognized in *dicta* that police may enter a home where they have "good reason to believe" that a threat of violence exists. *Georgia v. Randolph*, ___ U.S. ___, 126 U.S. 1515, 1525 (2006). Continuing, the Court opined that "it would be silly to suggest that the police would [act unlawfully] by entering . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur. . . ." *Id.* Yet, that is precisely what respondents and their amicus suggest.

Implicit in *Randolph's* recognition that officers may intervene to prevent violence is the understanding that violence poses an inherent risk of serious harm. This Court should therefore hold that absent rare circumstances indicating otherwise, e.g., a boxing match, officers may intervene when they have reason to believe violence is ongoing or imminent.

* * *

Respondents and their amicus complain that such a holding would create an inappropriate bright line rule. Resp. Brf. 11; NACDL Brf. 19-22. But permitting warrantless intervention where the facts support a reasonable

belief that violence is ongoing or imminent is no more a bright line rule than permitting a weapons frisk where the facts support a reasonable belief that a suspect is armed and dangerous. *See Terry*, 392 U.S. at 23-30. What the City proposes is not a bright line rule, but a workable standard.

Respondents and their amicus argue that police should be required to monitor the violence and act only after serious injury has been inflicted or when it becomes evident that it will be inflicted. Such a rule ignores the inherent risks and ambiguities associated with violence.

Violence carries with it the inherent risk of serious harm.[4] Moreover, it is unpredictable, evolving, and volatile. A simple assault may in an instant escalate into an aggravated assault or even a homicide. Police cannot know what blow will result in a broken jaw, dangerous eye injury, or ruptured spleen. Nor can they predict with any accuracy when a combatant will employ a nearby or hidden weapon.

In the face of such volatility, police officers cannot be expected to remain at "the porch steps until it is too late to prevent the very injury . . . [they] are entitled to prevent." Pet. App. 31 (Durrant, J., dissenting in part). Emergency aid encompasses more than entry to administer medical assistance for serious injuries already suffered. It also encompasses entry to "*avoid* serious injury." *Mincey*, 437 U.S. at 392-93 (citation omitted) (emphasis added).

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[4] Violence is defined as the "exertion of any physical force so as to injure or abuse." Webster's Third New International Dictionary 2554 (1993).

NACDL concedes that the violence justified the officers in "monitor[ing] the situation from their prime vantage point" within the curtilage of the home. NACDL Brf. 25. This concession acknowledges the unpredictable and volatile nature of violence, but naively assumes a calibrated clairvoyance that no officer enjoys. Officers cannot be expected to remain at the porch steps until they know serious injury will result. This Court has never required certainty before permitting officers to act. *New Jersey v. T.L.O.*, 469 U.S. 325, 346 (1985). The reasonable belief standard deals instead with "probabilities" – those "'common-sense conclusions about human behavior'" formulated by "'practical people.'" *United States v. Sokolow*, 490 U.S. 1, 8 (1989) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). Absent unusual circumstances that indicate the violence is not likely to result in serious injury, police should be able to act.

III.

THE CIRCUMSTANCES CONFRONTING THE BRIGHAM CITY OFFICERS JUSTIFIED THEIR ENTRY

Respondents and their amicus attempt to downplay the violence witnessed by the Brigham City officers. But the trial court's findings, the record that supports those findings, and the Utah Supreme Court's summary of the facts, belie that attempt.[5]

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[5] NACDL contends that this Court should not consider other undisputed record facts, such as the likely presence of weapons in the kitchen, that were not considered by the Utah Supreme Court, and improperly characterizes the trial court's findings of fact, prepared by the prosecution, as "stipulated record facts." NACDL Brf. 17-19, 24 &

(Continued on following page)

The trial court found that "through [back] windows and a screen door," the Brigham City officers watched "an altercation taking place, wherein it appeared that four adults were trying to control a juvenile." Pet. App. 47. At the suppression hearing, Officer Johnson explained that the adults "had ahold of [the juvenile's] wrists" and "were trying to press him into some type of control against [the] refrigerator" in the kitchen. J.A. 39, 58. He testified that the juvenile's hands "were doubled into fists" and that he was "twisting and turning and writhing" in an effort to break free. J.A. 39, 58.

The trial court further found that the altercation was "loud" and "tumultuous." Pet. App. 47. Officer Johnson explained that the adults were yelling at the juvenile to "calm down," that "obscenities [were] flying," and that "threats were being exchanged." J.A. 71-72. He further testified that he could hear the commotion from the street. J.A. 26, 28. The trial court found that it was so loud and tumultuous that "the occupants probably would not have heard" a knock at the door. Pet. App. 47. Officer Johnson testified that when he later opened the screen door and

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n.6. But as noted in the City's opening brief, Pet. Brf. 2 n.1, this Court examines the entire record in determining constitutional rights. *See Ker v. California*, 374 U.S. 23, 34 (1963). Although language in the Utah Supreme Court's opinion suggested that it would not consider some facts not included in the written findings, the Utah court did so, acknowledging that because "[s]earch and seizure cases are 'highly fact dependent,' . . . the trial court's factual findings are supplemented with relevant, objective facts gleaned from testimony given during the evidentiary hearing" on the motion to suppress. Pet. App. 2 n.1. Even if this Court refused to consider Officer Johnson's testimony that kitchens are especially dangerous places because of the presence of knives, the Court could certainly take judicial notice of that fact.

shouted "police," "[i]t was so loud, it was so tumultuous, that nobody heard a word." J.A. 40.

The trial court found that "[a]t one point, the juvenile got a hand loose and smacked one of the occupants of the residence in the nose." Pet. App. 47; *accord* Pet. App. 2 (Utah Supreme Court observing that "the juvenile swung a fist and struck one of the adults in the face"). Officer Johnson testified that from outside the screen door, he saw the juvenile "get one of his hands free" and "sw[i]ng his fist and land[] a punch on the nose and mouth area" of one of the adult males. J.A. 40. He testified that the punch landed "squarely on the [adult's] face, enough to draw blood." J.A. 59.

Following the punch, Officer Johnson pulled open the screen door and shouted to identify himself. J.A. 40; *accord* Pet. App. 2 (Utah Supreme Court observing that the officers "then opened the screen door and 'hollered' to identify themselves"). Officer Johnson testified that a "flurry of activity" also ensued after the punch, as the adults forced the juvenile "against the refrigerator so hard that the refrigerator was actually walking." J.A. 40, 60. It was so loud that none of the occupants heard Officer Johnson's announcement. J.A. 40; *accord* Pet. App. 2 (recognizing that "no one heard" the officers' announcement following the punch).

Officer Johnson testified that after his first attempt to gain the occupants' attention failed, he "stepped into the home" and again yelled "as loud as he could." J.A. 41; *accord* Pet. App. 2 (Utah Supreme Court observing that the officers "entered the kitchen" and one of them "again shouted to identify and call attention to himself"). Officer Johnson testified that at that point, the occupants began

to realize that the police were there and "[o]ne by one, as they became aware," the fight "dissipated." J.A. 41, 62. Officer Johnson testified that he then stepped between the combatants and handcuffed the juvenile to "save anybody else from getting punched." J.A. 41.

In sum, the scene that played out before the officers was not the trivial and innocuous situation described by respondents and their amicus. The altercation was violent and uncontrolled, the combatants were spewing out threats and obscenities, and the fight had escalated with the punch. In addition, the possible domestic nature of the fight, coupled with the fight's location in a kitchen, where knives are commonly found, only served to amplify the already reasonable belief that the fight may result in serious injury absent immediate intervention.[6]

Thus, contrary to the claim of respondents' amicus, the fight was indeed the "kind of situation that was so volatile" and "out of control" that immediate intervention was reasonable. NACDL Brf. 25. As observed by the Utah Supreme Court, "[i]t was the acknowledged presence of the authority of the police that quenched the heat in the

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[6] Respondents' amicus argues that this Court should not consider the possible domestic nature of the altercation, relying on the Utah Supreme Court's conclusion that such a consideration is inappropriate where no finding was made that the combatants were cohabitants. *See* Pet. App. 25. This misapprehends the nature of the "reasonable belief" inquiry. As noted by this Court in *Sokolow*, "'[t]he process does not deal with hard certainties, but with probabilities.'" 490 U.S. at 8 (citation omitted). The Utah Supreme Court acknowledged that "any altercation taking place within a home may result in a reasonable belief that the participants are cohabitants committing domestic violence." Pet. App. 22 n.7.

kitchen." Pet. App. 18. The officers would have been derelict in their duty had they not acted to stop the violence.

CONCLUSION

For the reasons stated above and in the City's opening brief, this Court should reverse the decision of the Utah Supreme Court.

Respectfully submitted,

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BRIGHAM CITY, UTAH *v.* STUART ET AL.

CERTIORARI TO THE SUPREME COURT OF UTAH

No. 05–502. Argued April 24, 2006—Decided May 22, 2006

Responding to a 3 a.m. call about a loud party, police arrived at the house in question, heard shouting inside, proceeded down the driveway, and saw two juveniles drinking beer in the backyard. Entering the yard, they saw through a screen door and windows an altercation in the kitchen between four adults and a juvenile, who punched one of the adults, causing him to spit blood in a sink. An officer opened the screen door and announced the officers' presence. Unnoticed amid the tumult, the officer entered the kitchen and again cried out, whereupon the altercation gradually subsided. The officers arrested respondents and charged them with contributing to the delinquency of a minor and related offenses. The trial court granted their motion to suppress all evidence obtained after the officers entered the home on the ground that the warrantless entry violated the Fourth Amendment, and the Utah Court of Appeals affirmed. Affirming, the State Supreme Court held that the injury caused by the juvenile's punch was insufficient to trigger the "emergency aid doctrine" because it did not give rise to an objectively reasonable belief that an unconscious, semiconscious, or missing person feared injured or dead was in the home. Furthermore, the court suggested the doctrine was inapplicable because the officers had not sought to assist the injured adult but had acted exclusively in a law enforcement capacity. The court also held that the entry did not fall within the exigent circumstances exception to the warrant requirement.

Held: Police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.

Because the Fourth Amendment's ultimate touchstone is "reasonableness," the warrant requirement is subject to certain exceptions. For example, one exigency obviating the requirement is the need to

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render emergency assistance to occupants of private property who are seriously injured or threatened with such injury. *Mincey* v. *Arizona*, 437 U. S. 385, 392. This Court has repeatedly rejected respondents' contention that, in assessing the reasonableness of an entry, consideration should be given to the subjective motivations of individual officers. Because the officers' subjective motivation is irrelevant, *Bond* v. *United States*, 529 U. S. 334, 338, n. 2, it does not matter here whether they entered the kitchen to arrest respondents and gather evidence or to assist the injured and prevent further violence. *Indianapolis* v. *Edmond*, 531 U. S. 32, 46, and *Florida* v. *Wells*, 495 U. S. 1, 4, distinguished. Relying on this Court's holding in *Welsh* v. *Wisconsin*, 466 U. S. 740, 753, that "an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made," respondents further contend that their conduct was not serious enough to justify the officers' intrusion into the home. This contention is misplaced. In *Welsh*, the "only potential emergency" confronting the officers was the need to preserve evidence of the suspect's blood-alcohol level, an exigency the Court held insufficient under the circumstances to justify a warrantless entry into the suspect's home. *Ibid.* Here, the officers were confronted with *ongoing* violence occurring *within* the home, a situation *Welsh* did not address.

The officers' entry here was plainly reasonable under the circumstances. Given the tumult at the house when they arrived, it was obvious that knocking on the front door would have been futile. Moreover, in light of the fracas they observed in the kitchen, the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence was just beginning. Nothing in the Fourth Amendment required them to wait until another blow rendered someone unconscious, semiconscious, or worse before entering. The manner of their entry was also reasonable, since nobody heard the first announcement of their presence, and it was only after the announcing officer stepped into the kitchen and announced himself again that the tumult subsided. That announcement was at least equivalent to a knock on the screen door and, under the circumstances, there was no violation of the Fourth Amendment's knock-and-announce rule. Furthermore, once the announcement was made, the officers were free to enter; it would serve no purpose to make them stand dumbly at the door awaiting a response while those within brawled on, oblivious to their presence. Pp. 3–7.

2005 UT 13, 122 P. 3d 506, reversed and remanded.

ROBERTS, C. J., delivered the opinion for a unanimous Court. STEVENS, J., filed a concurring opinion.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 05–502

BRIGHAM CITY, UTAH, PETITIONER *v.* CHARLES W. STUART ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

[May 22, 2006]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

In this case we consider whether police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. We conclude that they may.

I

This case arises out of a melee that occurred in a Brigham City, Utah, home in the early morning hours of July 23, 2000. At about 3 a.m., four police officers responded to a call regarding a loud party at a residence. Upon arriving at the house, they heard shouting from inside, and proceeded down the driveway to investigate. There, they observed two juveniles drinking beer in the backyard. They entered the backyard, and saw—through a screen door and windows—an altercation taking place in the kitchen of the home. According to the testimony of one of the officers, four adults were attempting, with some difficulty, to restrain a juvenile. The juvenile eventually "broke free, swung a fist and struck one of the adults in the face." 2005 UT 13, ¶2, 122 P. 3d 506, 508. The officer

testified that he observed the victim of the blow spitting blood into a nearby sink. App. 40. The other adults continued to try to restrain the juvenile, pressing him up against a refrigerator with such force that the refrigerator began moving across the floor. At this point, an officer opened the screen door and announced the officers' presence. Amid the tumult, nobody noticed. The officer entered the kitchen and again cried out, and as the occupants slowly became aware that the police were on the scene, the altercation ceased.

The officers subsequently arrested respondents and charged them with contributing to the delinquency of a minor, disorderly conduct, and intoxication. In the trial court, respondents filed a motion to suppress all evidence obtained after the officers entered the home, arguing that the warrantless entry violated the Fourth Amendment. The court granted the motion, and the Utah Court of Appeals affirmed.

Before the Supreme Court of Utah, Brigham City argued that although the officers lacked a warrant, their entry was nevertheless reasonable on either of two grounds. The court rejected both contentions and, over two dissenters, affirmed. First, the court held that the injury caused by the juvenile's punch was insufficient to trigger the so-called "emergency aid doctrine" because it did not give rise to an "objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead [was] in the home." 122 P. 3d, at 513 (internal quotation marks omitted). Furthermore, the court suggested that the doctrine was inapplicable because the officers had not sought to assist the injured adult, but instead had acted "exclusively in their law enforcement capacity." *Ibid.*

The court also held that the entry did not fall within the exigent circumstances exception to the warrant requirement. This exception applies, the court explained, where

police have probable cause and where "a reasonable person [would] believe that the entry was necessary to prevent physical harm to the officers or other persons." *Id.*, at 514 (internal quotation marks omitted). Under this standard, the court stated, the potential harm need not be as serious as that required to invoke the emergency aid exception. Although it found the case "a close and difficult call," the court nevertheless concluded that the officers' entry was not justified by exigent circumstances. *Id.*, at 515.

We granted certiorari, 546 U. S. ___ (2006), in light of differences among state courts and the Courts of Appeals concerning the appropriate Fourth Amendment standard governing warrantless entry by law enforcement in an emergency situation. Compare *In re Sealed Case 96–3167*, 153 F. 3d 759, 766 (CADC 1998) ("[T]he standard for exigent circumstances is an objective one") and *People* v. *Hebert*, 46 P. 3d 473, 480 (Colo. 2002) (en banc) (considering the circumstances as they "would have been objectively examined by a prudent and trained police officer"), with *United States* v. *Cervantes*, 219 F. 3d 882, 890 (CA9 2000) ("[U]nder the emergency doctrine, '[a] search must not be primarily motivated by intent to arrest and seize evidence'" (quoting *People* v. *Mitchell*, 39 N. Y. 2d 173, 177, 347 N. E. 2d 607, 609 (1976)) and *State* v. *Mountford*, 171 Vt. 487, 492, 769 A. 2d 639, 645 (2000) (*Mitchell* test "requir[es] courts to find that the primary subjective motivation behind such searches was to provide emergency aid").

II

It is a "'basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable.'" *Groh* v. *Ramirez*, 540 U. S. 551, 559 (2004) (quoting *Payton* v. *New York*, 445 U. S. 573, 586 (1980) (some internal quotation marks omitted)).

Nevertheless, because the ultimate touchstone of the Fourth Amendment is "reasonableness," the warrant requirement is subject to certain exceptions. *Flippo* v. *West Virginia*, 528 U. S. 11, 13 (1999) *(per curiam)*; *Katz* v. *United States*, 389 U. S. 347, 357 (1967). We have held, for example, that law enforcement officers may make a warrantless entry onto private property to fight a fire and investigate its cause, *Michigan* v. *Tyler*, 436 U. S. 499, 509 (1978), to prevent the imminent destruction of evidence, *Ker* v. *California*, 374 U. S. 23, 40 (1963), or to engage in "hot pursuit" of a fleeing suspect, *United States* v. *Santana*, 427 U. S. 38, 42–43 (1976). "[W]arrants are generally required to search a person's home or his person unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey* v. *Arizona*, 437 U. S. 385, 393–394 (1978).

One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury. "'The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" *Id.*, at 392 (quoting *Wayne* v. *United States*, 318 F. 2d 205, 212 (CADC 1963) (Burger, J.)); see also *Tyler*, *supra*, at 509. Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. *Mincey*, *supra*, at 392; see also *Georgia* v. *Randolph*, 547 U. S. ___, ___ (2006) (slip op., at 13–14) ("[I]t would be silly to suggest that the police would commit a tort by entering . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur").

Respondents do not take issue with these principles, but instead advance two reasons why the officers' entry here was unreasonable. First, they argue that the officers were

more interested in making arrests than quelling violence. They urge us to consider, in assessing the reasonableness of the entry, whether the officers were "indeed motivated primarily by a desire to save lives and property." Brief for Respondents 3; see also Brief for National Association of Criminal Defense Lawyers as *Amicus Curiae* 6 (entry to render emergency assistance justifies a search "only when the searching officer is acting outside his traditional law-enforcement capacity"). The Utah Supreme Court also considered the officers' subjective motivations relevant. See 122 P. 3d, at 513 (search under the "emergency aid doctrine" may not be "primarily motivated by intent to arrest and seize evidence" (internal quotation marks omitted)).

Our cases have repeatedly rejected this approach. An action is "reasonable" under the Fourth Amendment, regardless of the individual officer's state of mind, "as long as the circumstances, viewed *objectively*, justify [the] action." *Scott* v. *United States*, 436 U. S. 128, 138 (1978) (emphasis added). The officer's subjective motivation is irrelevant. See *Bond* v. *United States*, 529 U. S. 334, 338, n. 2 (2000) ("The parties properly agree that the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment . . . ; the issue is not his state of mind, but the objective effect of his actions"); *Whren* v. *United States*, 517 U. S. 806, 813 (1996) ("[W]e have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers"); *Graham* v. *Connor*, 490 U. S. 386, 397 (1989) ("[O]ur prior cases make clear" that "the subjective motivations of the individual officers . . . ha[ve] no bearing on whether a particular seizure is 'unreasonable' under the Fourth Amendment"). It therefore does not matter here—even if their subjective motives could be so neatly unraveled—whether the officers entered the kitchen to arrest respondents and gather evidence against

them or to assist the injured and prevent further violence.

As respondents note, we have held in the context of programmatic searches conducted without individualized suspicion—such as checkpoints to combat drunk driving or drug trafficking—that "an inquiry into *programmatic* purpose" is sometimes appropriate. *Indianapolis* v. *Edmond*, 531 U. S. 32, 46 (2000) (emphasis added); see also *Florida* v. *Wells*, 495 U. S. 1, 4 (1990) (an inventory search must be regulated by "standardized criteria" or "established routine" so as not to "be a ruse for a general rummaging in order to discover incriminating evidence"). But this inquiry is directed at ensuring that the purpose behind the *program* is not "ultimately indistinguishable from the general interest in crime control." *Edmond*, 531 U. S., at 44. It has nothing to do with discerning what is in the mind of the individual officer conducting the search. *Id.*, at 48.

Respondents further contend that their conduct was not serious enough to justify the officers' intrusion into the home. They rely on *Welsh* v. *Wisconsin*, 466 U. S. 740, 753 (1984), in which we held that "an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made." This contention, too, is misplaced. *Welsh* involved a warrantless entry by officers to arrest a suspect for driving while intoxicated. There, the "only potential emergency" confronting the officers was the need to preserve evidence (*i.e.*, the suspect's blood-alcohol level)—an exigency that we held insufficient under the circumstances to justify entry into the suspect's home. *Ibid.* Here, the officers were confronted with *ongoing* violence occurring *within* the home. *Welsh* did not address such a situation.

We think the officers' entry here was plainly reasonable under the circumstances. The officers were responding, at 3 o'clock in the morning, to complaints about a loud party. As they approached the house, they could hear from

within "an altercation occurring, some kind of a fight." App. 29. "It was loud and it was tumultuous." *Id.*, at 33. The officers heard "thumping and crashing" and people yelling "stop, stop" and "get off me." *Id.*, at 28, 29. As the trial court found, "it was obvious that . . . knocking on the front door" would have been futile. *Id.*, at 92. The noise seemed to be coming from the back of the house; after looking in the front window and seeing nothing, the officers proceeded around back to investigate further. They found two juveniles drinking beer in the backyard. From there, they could see that a fracas was taking place inside the kitchen. A juvenile, fists clenched, was being held back by several adults. As the officers watch, he breaks free and strikes one of the adults in the face, sending the adult to the sink spitting blood.

In these circumstances, the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning. Nothing in the Fourth Amendment required them to wait until another blow rendered someone "unconscious" or "semi-conscious" or worse before entering. The role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided.

The manner of the officers' entry was also reasonable. After witnessing the punch, one of the officers opened the screen door and "yelled in police." *Id.*, at 40. When nobody heard him, he stepped into the kitchen and announced himself again. Only then did the tumult subside. The officer's announcement of his presence was at least equivalent to a knock on the screen door. Indeed, it was probably the only option that had even a chance of rising above the din. Under these circumstances, there was no violation of the Fourth Amendment's knock-and-announce rule. Furthermore, once the announcement was made, the

officers were free to enter; it would serve no purpose to require them to stand dumbly at the door awaiting a response while those within brawled on, oblivious to their presence.

Accordingly, we reverse the judgment of the Supreme Court of Utah, and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 05–502

BRIGHAM CITY, UTAH, PETITIONER *v.* CHARLES W. STUART ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH

[May 22, 2006]

JUSTICE STEVENS, concurring.

This is an odd flyspeck of a case. The charges that have been pending against respondents for the past six years are minor offenses—intoxication, contributing to the delinquency of a minor, and disorderly conduct—two of which could have been proved by evidence that was gathered by the responding officers before they entered the home. The maximum punishment for these crimes ranges between 90 days and 6 months in jail. And the Court's unanimous opinion restating well-settled rules of federal law is so clearly persuasive that it is hard to imagine the outcome was ever in doubt.

Under these circumstances, the only difficult question is which of the following is the most peculiar: (1) that the Utah trial judge, the intermediate state appellate court, and the Utah Supreme Court all found a Fourth Amendment violation on these facts; (2) that the prosecution chose to pursue this matter all the way to the United States Supreme Court; or (3) that this Court voted to grant the petition for a writ of certiorari.

A possible explanation for the first is that the suppression ruling was correct as a matter of Utah law, and neither trial counsel nor the trial judge bothered to identify the Utah Constitution as an independent basis for the decision because they did not expect the prosecution to

appeal.* The most plausible explanation for the latter two decisions is that they were made so police officers in Utah may enter a home without a warrant when they see ongoing violence—we are, of course, reversing the Utah Supreme Court's conclusion to the contrary. But that purpose, laudable though it may be, cannot be achieved in this case. Our holding today addresses only the limitations placed by the Federal Constitution on the search at issue; we have no authority to decide whether the police in this case violated the Utah Constitution.

The Utah Supreme Court, however, has made clear that the Utah Constitution provides greater protection to the privacy of the home than does the Fourth Amendment. See *State* v. *Debooy*, 2000 UT 32, ¶12, 996 P. 2d 546, 549. And it complained in this case of respondents' failure to raise or adequately brief a state constitutional challenge, thus preventing the state courts from deciding the case on anything other than Fourth Amendment grounds. See 2005 UT 13, ¶12, 122 P. 3d 506, 510. "[S]urpris[ed]" by "[t]he reluctance of litigants to take up and develop a state constitutional analysis," *ibid.*, the court expressly invited future litigants to bring challenges under the Utah Constitution to enable it to fulfill its "responsibility as guardians of the individual liberty of our citizens" and "undertak[e] a principled exploration of the interplay between federal and state protections of individual rights," *id.*, at 511. The fact that this admonishment and request came from the Utah Supreme Court in this very case not only demonstrates that the prosecution selected the wrong case for establishing the rule it wants, but indicates that the Utah Supreme Court would probably adopt the same rule as a matter of state constitutional law that we reject today under the

*Indeed, it was the prosecution that prepared the trial court's order granting respondents' motion to suppress. See 2002 UT App. 317, ¶4, 57 P. 3d 1111, 1112.

Federal Constitution.

Whether or not that forecast is accurate, I can see no reason for this Court to cause the Utah courts to redecide the question as a matter of state law. Federal interests are not offended when a single State elects to provide greater protection for its citizens than the Federal Constitution requires. Indeed, I continue to believe "that a policy of judicial restraint—one that allows other decisional bodies to have the last word in legal interpretation until it is truly necessary for this Court to intervene—enables this Court to make its most effective contribution to our federal system of government." *Michigan* v. *Long*, 463 U. S. 1032, 1067 (1983) (STEVENS, J., dissenting). Thus, while I join the Court's opinion, I remain persuaded that my vote to deny the State's petition for certiorari was correct.